when a substantial portion of their traffic could have moved before the increases had the railroads furnished sufficient cars to handle the traffic. They have not opposed the increases, but have only requested that such increases as are granted not become effective for a period of ninety days from the date of the Order.

The Commission has considered the situation very carefully as to Road Aggregates, and the full Commission is of the opinion that the full increases thereon, as provided for in Appendix I of original Order 1443, Docket No. 1538, are authorized and will be just and reasonable for the future.

However, a majority of the Commission is of the opinion that such increases should not become effective for a period of ninety days from the date of this Order, or until 12:01 A. M., Monday, June 16, 1947.

Now, therefore, in consideration thereof, it is Ordered and Adjudged by the Railroad Commission of the State of Florida that the increases on Gravel and Sand—Group 350; Stone, broken, ground or crushed—Group 351, and Related Articles published in Item 450, Agent R. H. Hoke's Freight Tariff 427-D, I. C. C. 763, as set out in Appendix I attached to the original Order No. 1443, Docket No. 1538, be, and [fol. 100] the same are, hereby confirmed and approved, to become effective at 12:01 A. M., Monday, June 16, 1947, and said original Order and Appendix are hereby amended in that regard.

Done and Ordered by the Railroad Commission of the State of Florida, at Tallahassee, Florida, this 12th day of March, 1947.

Jerry W. Carter, Acting Chairman.

DISSENTING OPINION

I cannot agree with the foregoing supplementary order. The petitioning railroads have proven a pressing need for substantial revenue increases. I can see no reasonable excuse or justification for imposing the increases on the industries and shipping and receiving public of the state and, at the same time, exempting, even for ninety days, the State of Florida from the same increases.

It is common knowledge that there is, and has been for some time, a serious shortage of freight cars. This shortage is due to two things. First, the shortages in materials which go into their manufacture; and, second, the dwindling revenues of the carriers has handicapped them in procuring new and additional equipment. In addition, the distribution of all cars has been under the jurisdiction of the Office of Defense Transportation and the Interstate Commerce Commission since the beginning of the war. The railroads, therefore, were unable to meet the demands for cars in many instances.

[fol. 101] In view of these circumstances, I am unwilling to exempt the State even temporarily from increased rates and charges which the individual citizens of the State must pay.

W. B. Douglass, Chairman.

Appendix 3

Before the Florida Railroad and Public Utilities Commission

Order No. 1466 (C)
Docket No. 1574

In re: Application of rail lines for general increase in intrastate freight rates and charges

Order

This Commission has previously entered three Orders in this Docket. *The first, Order No. 1466, dated November 10, 1947, denied the temporary increases of 10% requested by the carriers. The second, Order No. 1466(A), dated April 9, 1948, granted increases of twenty per cent generally with certain exceptions. The third, Order No. 1466(B), dated May 12, 1948, merely clarified the exceptions contained in Order No. 1466 (A) relating to fertilizer and fertilizer materials.* This Docket is the intrastate counterpart of I. C. C. Docket Ex Parte No. 166 recently pending before the Interstate Commerce Commission.

Subsequent to the entry of the aforesaid Order by this [fol. 102] Commission, the Interstate Commerce Commission entered an Order on April 13, 1948, in Docket Ex Parte No. 166, authorizing increases in the railroad interstate basic rates and charges of 25 per cent within Southern territory and 25 per cent interterritorially. Shortly thereafter the rail lines herein petitioned this Commission for authority to make increases in intrastate freight rates and charges applicable within the State of Florida corresponding to the increases authorized by the Interstate Commerce Commission for interstate application in its said Order of April 13, 1948.

On June 23, 1948, this Commission held a public hearing on said supplemental petition. Thereafter, on July 27, 1948, the Interstate Commerce Commission entered its further Order in Ex Parte No. 166 making certain modifications in its previous Orders. Those modifications included both increases and decreases; however, the effect was a further increase in net freight revenue for the carriers, which on the basis of the normal, constructive year the Interstate Commerce Commission estimated at approximately $67,400,000 annually. On August 3, 1948, the carriers herein filed their third supplemental petition with this Commission requesting similar modifications.

The three major carriers operating within the State of Florida, The Atlantic Coast Line, The Seaboard Air Line and The Florida East Coast, which handle the vast majority of the traffic in this State, presented most of the evidence for the petitioning carriers.

[fol. 103] ACCOUNTING AND STATISTICAL EVIDENCE

The evidence of the Florida East Coast Railway Company was, with the exception of the statement that that carrier should receive from the increase on intrastate freight traffic $50,000.00 monthly and was receiving but $13,000.00, restricted to the results from operations for the years 1936 to 1947 inclusive, the revenues and expenses for the first four months of 1947 and 1948, and to the needs of that carrier for additional revenues.

Exhibit No. S-15 shows that with the exception of the years 1942 to 1946, inclusive, that carrier had a deficit from

passenger service operations which reached an all-time high of $2,028,333 in 1947.

Our records, which were stipulated into the record, show that for the 20 year period, 1928 to 1947 inclusive, the first three months of the year's freight and passenger revenues represented 31.1059% and 37.9574% respectively, of the year's freight and passenger revenue. Expanding the freight revenue for the first three months to a yearly basis produced a freight operating revenue of $18,508,566 as compared to the highest freight revenue ever earned by that line of $17,057,335 in 1943. Expanding the passenger revenue to a yearly basis produces a total of $7,364,221, or a total of over $25,500,000 for freight and passenger transportation only. This $25,500,000 is $260,000 greater than the average total revenues, including mail, express, switching, etc., for the five years 1941 to 1945, inclusive. [fol. 104] Exhibit No. S-1, sheet No. 6, shows that expanded upon the percentage which the first four months' freight revenue bore to the year's revenue for the years 1945, 1946 and 1948, the 1948 freight revenue would be $101,441,726. Based upon the percentage relationship of the first three months to the year's freight revenue for the period 1928 to 1947, inclusive, the freight revenue of the Atlantic Coast Line Railroad Company in 1948 will be $104,853,459, the largest freight revenue received by that carrier.

Exhibit S-21 reflects the estimate of the Seaboard Air Line Railroad Company for 1948 and shows the estimate, exclusive of Ex Parte 166 increases, to be $90,000,000, and the increase from interstate traffic under the interim increase of 20 per cent to be $14,524,893, making a total of $104,524,893. This estimate appears to be reliable and is but little less than the estimate of this Commission's staff. Based upon the 20 year period, 1928 to 1947 inclusive, the freight revenue of the first three months represented 26.1809 per cent of the year's freight revenue; expanding the freight revenue for the first three months ($27,702,193) produces $105,810,698, or slightly more than 1 per cent higher than the carriers' estimate and about $11,413,000 more than the largest freight revenue ever earned by this carrier.

The Interstate Commerce Commission in its report and

order, under date of April 13, 1948, commented upon the fact that the estimated increase in the volume of traffic was too high; that unsettled labor conditions, work-[fol. 105] stoppage in the coal-mining and packing house industries, unusually severe and long-continued bad weather conditions, and shortage of materials had all contributed to the decrease in the estimated volume of traffic. It likewise referred to the latest available operating ratios of the largest lines with the comment that such ratios speak for themselves.

Florida operations were not materially affected by the work stoppages in either coal-mining or packing house industries because none of the three Florida roads, handling about 90% of the volume of traffic, have any coal traffic to speak of. This, however, is not true with respect to the Southern District and especially is not true of either the operations of the Louisville and Nashville Railroad and the Southern Railroad.

From the above it is obvious that the reasons which appear to have been persuasive in influencing the Interstate Commerce Commission in increasing the interim rates from twenty to twenty-five per cent in the Southern Region are of but minor importance with respect to Florida intrastate traffic.

With respect to the operating ratios to which reference is made above and which appear to have had some weight in the decision of the Interstate Commerce Commission, Exhibits S-59 and S-60 dealing with the three major carriers operating to, from and within the State of Florida, hereinafter referred to as the "Florida Lines," reflect the following:

[fol. 106] For the three months ended March 31, 1948, the operating ratios applicable to the Southern Region are much more favorable than those for any other region or district. The system operating ratios of the three Florida lines are more favorable than those of the Southern Region and the Florida operating ratios of the three Florida lines and are more favorable than the system ratios. This despite the fact that the Florida operating ratios do not comprehend any of the increased revenue which will inure to the Florida lines as a result of our Order No. 1466(A) in Docket No. 1574, dated April 9, 1948.

The Interstate Commerce Commission in increasing the interim percentages in its order of April 13, 1948, excepted from such increases Western territory, other than Zone I of Western Trunk-Line territory, because of more favorable conditions and with equal justification this Commission is of the opinion that no further general increase in ad interim rates should be granted on Florida intrastate traffic at this time.

The carriers' petitions, therefore, requesting that the general percentage increases be raised from twenty to twenty-five per cent on intrastate freight rates and charges applicable within the State of Florida should be denied.

Consolidated with the hearings in this Docket were carriers' petitions for rehearing on the Exceptions contained in our Order No. 1464, Docket No. 1538, which exceptions were:

(1) Logs moving to mills.

[fol. 107] (2) Wet phosphate rock moving from washers to drying plants.

(3) Waste woods, such as stumps; knots, limbs, moving to retorts or recovery plants.

(4) Sugar cane moving to the mills.

(5) Increase of only 9 per cent on pulpwood.

(6) Postponement to June 16, 1947, or for a period of 90 days after the effective date of the other increases, of the 20 per cent allowed on road aggregates.

It is the opinion of this Commission that no evidence has been submitted by the carriers which would warrant a reconsideration of the aforesaid Exceptions in Docket No. 1538, Order No. 1464. The petition for rehearing, therefore, should be denied.

In the present Docket No. 1574, we excepted certain commodities from the 20 per cent increases allowed under our Order No. 1466(A). Those Exceptions were set out in Findings Numbered 3 to 10 inclusive of said Order. The Commission is of the opinion that these same Exceptions should be continued in effect until the further Order of this Commission.

At the hearings in this proceeding some protestants requested that "Sulphur" be considered as a fertilizer or fertilizer material, and that rates on phosphatic sand and

clay be restricted to the ground limestone level of rates. Rule 11, Section 3—Rules Governing the Transportation of [fol. 108] Freight by Railroads—as promulgated by this Commission reads as follows:

> "The term 'fertilizer' embraces the following and like articles, when intended to be used as fertilizers, to-wit: Sulphate of Ammonia . . . *sulphur*, muck . . . and like articles when intended to be used as fertilizers."

Under this rule "Sulphur" would carry the same rate as "fertilizer and fertilizer materials." Also, the Commission is of the opinion that the rates on phosphatic sand and clay should be restricted to the same level of rates applicable on ground limestone, which is considered as a fertilizer or fertilizer material and on which no increases have been allowed. The request that the same exceptions should apply to phosphatic sand and clay should be granted.

The request of tank truck petroleum carriers that rate disparities on bulk petroleum be taken care of in this proceeding should be denied. The relationship between truck rates and rail rates on bulk petroleum has been fixed by this Commission in another Docket and will be considered only in some future proceeding in that Docket.

There appears to have been considerable confusion in interpreting Finding Number 11 in Order No. 1466(A), as to class rates, apparently due to our failure to specifically state that the rates as of March 10, 1947, should be increased 10.25 per cent and that the rates so revised would then be subject to the full 20 per cent increase. The method stated above conforms to the basis prescribed by the Interstate [fol. 109] Commerce Commission in its Order of July 7, 1947, in I. C. C. Docket No. 28300, which embraced its findings in Ex Parte No. 162.

The Interstate Commerce Commission's Order in Docket No. 28300 specifically restricts the revision to class rates governed by classification ratings and as we are tracking the I. C. C. Order we should so restrict our revision. Therefore, petitioner's request that our Order be restricted to class rates governed by classification ratings should be granted.

The proposal of the Florida Rate Conference that this

Commission prescribe for intrastate application in Florida the class rates, commodity rates and exception ratings that are in effect on the date of this Order on interstate traffic between points within other Southeastern states goes beyond and broadens the issues of this proceeding. In the first place the revised class rates should be restricted to traffic moving under and governed by classification ratings; and commodities governed by exception ratings should not be comprehended in this revision. In the second place there is no evidence of record in this proceeding which warrants the elimination of arbitraries on classes below 7th class intrastate. In the third place, the arbitraries intrastate were prescribed in a proceeding in which nothing but the arbitraries were involved and they should be removed, if warranted, under a similar proceeding.

In order to clarify Finding No. 11, in Order No. 1466(A), and to preclude any further confusion and misunderstand- [fol. 110] ing with respect to the Commission's findings, we attach to this Order three appendices, as follows:

(A) A first class mileage scale of rates restricted to classification ratings for application intrastate in Florida on and north of the Seaboard Air Line Railroad Company between Jacksonville and Chattahoochee, Florida, and also applicable on the first seven classes in Peninsular Florida.

(B) A first class scale of rates, including the arbitrary, restricted to classification ratings for application intrastate in Peninsular Florida on classes below 7th class. This scale to be the scale reflected under Appendix "A" plus the arbitraries to be prescribed and reflected under Appendix "C."

(C) A first class arbitrary mileage scale of rates restricted to classification ratings for application intrastate in Peninsular Florida on classes below 7th class on traffic moving from and to Peninsular Florida to and from points on and north of the Jacksonville-Chattahoochee, Florida, line of the Seaboard Air Line Railroad Company. This scale to be the original scale prescribed in Order No. 977, Docket No. 1000 under date of October 29, 1928, increased by 10 per cent under Docket No. 1321 (Ex Parte No. 123) reduced 10 per cent

under Finding No. 11 of this Order and increased 22.5 per cent under Finding No. 11 of this Order.

[fol. 111] Each of the above scales to be subject to the full 20 per cent increase authorized in Order No. 1466 (A).

While it is the opinion of this Commission that all arbitraries above referred to and now existing on traffic moving between points in Peninsular Florida and points north of the Jacksonville-Chattahoochee, Florida line of the Seaboard Air Line Railroad should be eliminated, nevertheless such a desirable result cannot be reached in this particular proceeding. It is to be understood, however, that we use the "arbitraries" in developing the Appendices hereto attached through necessity, rather than choice, and we do not mean to infer that we approve the application of "arbitraries" on any Florida traffic.

The interim adjustment which was authorized in our Order No. 1466 (A) should continue in effect until July 1, 1949, unless sooner modified by Order of this Commission. The carriers should continue to apply the increases therein granted as a percentage increase in the amount of the total freight charges, as shown by the freight bill, exclusive of the 3 per cent Federal transportation tax as provided for in our Order No. 1466 (A).

It is possible that under the percentage increases here approved, there may be some instances in which the increases, in absolute amounts, will exceed the maximum hold-downs set out in carriers' petitions. In such event, the maximum hold-downs will apply, rather than the percentage increases.

The record in this proceeding will be held open for further [fol. 112] consideration, pending final determination of the issues involved. Appropriate Orders for relief from the Florida Long and Short Haul Law, Section 350.56, Florida Statutes, 1941, and Am. Freight Rule No. 2 will be entered.

The carriers should have 30 days from the date of this Order within which time to put into effect the mileage scale of rates shown in Appendices A, B and C hereto attached and made a part of this Order. All other parts of this Order are effective immediately.

Now, therefore, in consideration thereof, it is ordered,

adjudged and decreed by the Florida Railroad and Public Utilities Commission that the petition for further increases in Florida intrastate rail rates and charges be, and the same is, hereby denied until the final Order of this Commission in this Docket.

It is further ordered and adjudged that the 20 per cent increases granted in Order No. 1466 (A) be, and they are, hereby continued in effect until July 1, 1949, unless sooner modified or changed by Order of this Commission.

It is further ordered and adjudged that the carriers make effective, on or before 30 days from the date of this Order, the mileage scale of rates shown in Appendices A, B and C attached hereto.

It is further ordered and adjudged that the findings contained in this Order be, and they are, hereby approved and shall be given effect by the petitioning carriers as indicated herein.

[fol. 113] It is further ordered and adjudged that the record and proceedings herein be held open for the further consideration of the Commission and the entry of such further Orders as may be appropriate.

By the Commission this 13th day of November, 1948.

D. Fred McMullen, *Executive Secretary.*

(Seal.)

APPENDIX "A"

A first class mileage scale of rates restricted to classification ratings for application intrastate in Florida on and north of the Seaboard Air Line Railroad Company between Jacksonville and Chattahoochee, Florida, and also applicable on the first seven classes in Peninsular Florida.

Miles	*Rate*	*Miles*	*Rate*
10	44	150	106
15	46	160	109
20	49	170	112
25	51	180	117
30	53	190	120
35	56	200	123
40	58	210	126
45	61	220	129
50	63	230	131
55	65	240	133

Miles	*Rate*	*Miles*	*Rate*
60	68	250	136
65	71	260	138
70	73	280	143
75	75	290	146
80	77	300	148
85	80	320	153
90	83	330	155
95	85	340	158
100	87	360	162
110	92	370	165
120	95	380	168
130	98	400	172
140	101	410	173

[fol. 114]

420	176	620	213
440	180	640	216
450	181	660	219
460	183	680	223
480	186	700	227
500	191	720	230
520	194	740	234
540	197	760	238
560	202	780	241
580	205	800	245
600	208		

APPENDIX "B"

A first class scale of rates, including the arbitrary, restricted to classification ratings for application, intrastate in Peninsular Florida on classes below seventh class. This scale to be the scale reflected under Appendix "A", plus the arbitraries to be prescribed and reflected under Appendix "C."

Miles	*Rate*	*Miles*	*Rate*
10	52	150	123
15	55	160	126
20	58	170	131
25	60	180	136
30	63	190	139
35	66	200	143

Miles	Rate	Miles	Rate
40	68	210	146
45	72	220	149
50	74	230	152
55	77	240	154
60	80	250	157
65	83	260	160
70	86	280	165
75	88	290	168
80	90	300	172
85	94	320	177
90	97	330	179
95	99	340	183
100	101	360	187
110	106	370	190
120	109	380	194
130	113	400	198
140	116	410	199

[fol. 115]

420	203	520	225
440	207	540	228
450	208	560	233
460	212	580	236
480	215	600	239
500	220		

Appendix "C"

A first class arbitrary mileage scale of rates restricted to classification ratings for application intrastate in Peninsular Florida on classes below seventh class on traffic moving from and to Peninsula Florida to and from points on and north of the Jacksonville-Chattahoochee, Florida, line of the Seaboard Air Line Railroad Company. This scale to be the original scale prescribed in Order No. 977, Docket No. 1000 under date of October 29, 1928, increased by 10 per cent under Docket No. 1321 (Ex Parte No. 123) reduced 10 per cent under Finding No. 11 of this Order and increased 22.5 per cent under Finding No. 11 of this Order.

	First Class Arbitrary
10 Miles and under	8
25 Miles and over 10	9
40 Miles and over 25	10
50 Miles and over 40	11
65 Miles and over 50	12
80 Miles and over 65	13
120 Miles and over 80	14
140 Miles and over 120	15
160 Miles and over 140	17
190 Miles and over 160	19
220 Miles and over 190	20
250 Miles and over 220	21
290 Miles and over 250	22
330 Miles and over 290	24
370 Miles and over 330	25
410 Miles and over 370	26
450 Miles and over 410	27
500 Miles and over 450	29
Over 500 Miles	31

Classes Below First Class To Be Worked on the Following Percentage Relationships

Classes	1	2	3	4	5	6	7	8	9	10	11	12
Percentages	100	85	70	55	45	40	35	30	25	22.5	20	17.5

[fol. 116] BEFORE THE INTERSTATE COMMERCE COMMISSION

ORDER OF INVESTIGATION—January 5, 1949

It appearing, That a petition has been filed on behalf of the Atlanta & St. Andrews Bay Railway Company and other common carriers by railroad operating to, from, and between points in the State of Florida, which said petition is hereby referred to and made part hereof, averring that in Ex Parte No. 162, *Increased Railway Rates, Fares and Charges, 1946*, and Ex Parte No. 148, *Increased Railway Rates, Fares, and Charges, 1942*, 264 I.C.C. 695, and 266 I.C.C. 537, the Commission authorized certain increases in rates and charges for the interstate transportation of property throughout the United States, which were established

July 1, 1946 and January 1, 1947, respectively, and in Ex Parte No. 166, *Increased Freight Rates, 1947*, 269 I.C.C. 33, 270 I.C.C. 81, 93, and 403, authorized certain additional increases in such interstate rates and charges, which were established October 13, 1947, January 5, 1948, May 6, 1948, and August 21, 1948, respectively; and that the Railroad Commission of the State of Florida, or its successor, the Florida Railroad and Public Utilities Commission, by report and Order No. 1443, dated March 14, 1947, and report and Order No. 1443 (Supplement), dated March 12, 1947, in its Docket No. 1538, and Report and Order No. 1466 (C), dated November 13, 1948, in its Docket No. 1574, as set out in said petition, has refused to authorize or permit said petitioners to apply to the intrastate transportation of property by railroad in Florida, increases in rates and charges corresponding to those approved for interstate application in the proceedings above cited;

[fol. 117] It further appearing, That said petitioners allege that the rates and charges which they are required to maintain for the intrastate transportation of property by railroad in Florida as a result of such refusal by the Railroad Commission of the State of Florida, or its successor, as aforesaid, cause undue and unreasonable advantage, preference, and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand, and undue, unreasonable, and unjust discrimination, against interstate and foreign commerce;

And if further appearing, That the said petition brings in issue rates and charges for the transportation of property made or imposed by authority of the State of Florida:

It is ordered, That in response to the said petition, an investigation be, and it is hereby, instituted, and that a hearing be held therein for the purpose of receiving evidence from the respondents hereinafter designated and any other persons interested, to determine whether the rates and charges of the said respondents, or any of them, for the intrastate transportation of property, made or imposed by authority of the State of Florida, cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other

hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce; and to determine what rates and charges, if any, or what maximum, or minimum, or maximum and minimum rates and charges, shall be prescribed to remove the unlawful advantage, preference, prejudice, or discrimination, if any, that may be found to exist;

[fols. 118-120] It is further ordered, That all common carriers by railroad operating within the State of Florida subject to the jurisdiction of this Commission be, and they are hereby, made respondents to this proceeding; that a copy of this order be served upon each of the said respondents; and that the State of Florida be notified of this proceeding by sending copies of this order and of said petition by registered mail to the Governor of the said State and to the Florida Railroad and Public Utilities Commission at Tallahassee, Fla.;

It is further ordered, That notice of this proceeding be given to the public by depositing a copy of this order in the office of the Secretary of the Commission, at Washington, D. C., and by filing a copy with the Director, Division of the Federal Register, Washington, D. C.;

And it is further ordered, That this proceeding be assigned for hearing at such times and places as the Commission may hereafter direct.

By the Commission, Division 1.

W. P. Bartel, Secretary. (Seal.)

[fol. 121] BEFORE THE INTERSTATE COMMERCE COMMISSION

No. 30140[1]

INCREASES IN FLORIDA INTRASTATE RATES

Submitted April 11, 1950. Decided May 4, 1950

1. Intrastate freight rates and charges in Florida found to cause unjust discrimination against interstate commerce; undue preference of and advantage to certain persons and localities in intrastate commerce, and undue prejudice and

[1] This report also embraces I. & S. No. 5646, Sugar Cane, Florida to Clewiston, Fla.

disadvantage to certain persons and localities in interstate commerce.

2. Proposed interstate transit rates, minima, and rules on sugar cane, in carloads, from certain loading stations in Florida to Clewiston, Fla., found just and reasonable, except as noted in the report. Suspended schedules ordered canceled, and proceeding discontinued, without prejudice to the filing of new schedules in conformity with the conclusions.

Frank W. Gwathmey, James A. Bistline, W. A. Northcutt, M. G. Roberts, Charles Clark, and Chas. P. Reynolds for respondents.

D. S. Browder for Pennsylvania Dixie Cement Corporation, in behalf of respondents.

Wilbur C. King, Jerry W. Carter, Richard A. Mack, Lewis W. Petteway, Fred McMullen, and Fred Pettijohn for Florida Railroad and Public Utilities Commission and representing the Attorney General of the State of Florida, protestants.

F. C. Hillyer, Thomas E. Grady, T. C. Maurer, B. H. Overton, H. L. Lawton, R. Y. Patterson, Otis A. Jones, Cecil Jones, G. R. Gordon, M. D. Malmend, W. H. Backer, Gordon Stedman, M. W. Wells, R. J. Healy, Wilbur LaRoe, Jr., Frederick E. Brown, Arthur L. Winn, Jr., Samuel H. Moerman, J. R. Stanfield, A. M. Ribe, F. E. Harrison, Jr., and W. W. Balkcom for numerous shippers, protestants.

REPORT OF THE COMMISSION

PATTERSON, Commissioner:

Exceptions to the report proposed by the examiner were filed by protestants, and the issues were orally argued. Our conclusions differ from those recommended in the proposed report. Exceptions and requested findings not discussed in this report nor reflected in our findings or conclusions have been considered and found not justified. We [fol. 122] shall discuss, first, the evidence of record in No 30140, and second, the evidence of record in I. & S. No. 5646.

No. 30140

Issues.—This proceeding is an investigation under section 13 of the Interstate Commerce Act concerning the law-

fulness of Florida intrastate freight rates and charges.[2] Responsive to a petition, as amended, filed by the principal railroads serving Florida, we entered upon this investigation for the purpose of determining whether the rates and charges of the common carriers by railroad operating in Florida, or any of them, for the intrastate transportation of property, made or imposed by authority of the State of Florida, cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, and, if so, what rates and charges, or what maximum or minimum, or maximum and minimum, rates and charges shall be prescribed to remove any unlawfulness found to exist.

All carriers by railroad operating in Florida which are subject to our jurisdiction were made respondents.[3] Copies of the order of investigation and notice of hearing were served upon each of them and upon the State of Florida.

[fol. 123] Proposed increases.—The increases proposed by respondents herein differ considerably from those under consideration in *Increases in Alabama Freight Rates and Charges, 274 I.C.C. 439.* We shall discuss the evidence herein more or less following the sequence of subjects used in that proceeding, but treating some evidence in more technical detail and some subjects at greater length. It will not be necessary to discuss the various factual similarities and differences that exist in the two proceedings. Each situation presented herein will be dealt with on its own merits.

In *Increased Railway Rates, Fares, and Charges, 1946,*

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[2] Except as noted, rates and charges will be stated herein in amounts per 100 pounds. They do not include general increases authorized subsequent to Ex Parte No. 166, and as such, will be referred to as the present rates.

[3] The principal respondents include the Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, and Florida East Coast Railway Company (Scott M. Loftin and John W. Martin, Trustees). These carriers will be referred to by their short titles.

266 I.C.C. 537, decided December 5, 1946, referred to herein as Ex Parte No. 162, we authorized general increases in the interstate freight rates and charges, with few exceptions, of carriers subject to Part I of the act, *of 25 percent in official territory, 20 percent in and between other territories, and 22½ percent between official and other territories*, subject to certain maximum amounts on particular commodities and to specified flat increases on others. The rates as thus increased effective January 1, 1947, were found to be just and reasonable. *On class rates*, this authorization subsequently *was modified so as to authorize a uniform increase of 22½ percent in all class rates, not including rates based on classification exception ratings*, affected by the decision in *Class Rate Investigation, 1939, 262 I.C.C. 447, 264 I.C.C. 41, 268 I.C.C. 577, referred to as No. 28300*, or the class rate investigation. The interstate rates as thus revised became effective August 22, 1947.

In a report of June 20, 1946, in Ex Parte No. 162 and a companion proceeding, *264 I.C.C. 695*, we had authorized certain interim increases in interstate rates and charges, generally 6 percent in southern territory, which became ef- [fol. 124] fective July 1, 1946. Following this authorization, respondents sought authority from the Florida Railroad and Public Utilities Commission to make corresponding increases on intrastate traffic. This request was granted and the intrastate increases were established on July 1, 1946, the same day the interstate interim increases became effective.

On December 7, 1946, respondents filed with the Florida commission a further request, directing attention to their previous petition of May 2, 1946, seeking additional increases in the intrastate rates and charges corresponding in all respects to those approved in the Ex Parte No. 162 report of December 5, 1946. On March 11, 1947, such authority was granted by that Commission, *except that no increase was granted on (a) logs moving to the mills, (b) wet phosphate rock moving from washer to drying plant, (c) wastewoods such as stumps, knots, and limbs moving to retorts or recovery plants, and (d) sugar cane moving to the mills. A further exception was that on pulpwood an increase of 9 percent on the so-called Ex Parte 123 rates should apply.* On May 9, 1947, however, that Commission

permitted an increase of *20 percent in rates on pulpwood between points on the Atlanta & Saint Andrews Bay Railway Company.* All of the intrastate increases were established March 16, 1947, except those on road aggregates which became effective on June 16, 1947.

Subsequently, in *Increased Freight Rates, 1947, 270 I.C.C. 403, decided July 27, 1948*, and referred to as Ex Parte No. 166, we authorized interstate increases of 30 percent in official territory, *25 percent in southern territory and in* western trunk-line zone I, 20 per cent in the remainder of western territory, *25 percent between southern and western* territories and between those territories, on the one hand, and official territory on the other, and 22½ percent between western territory other than western trunk-line zone I, and [fol. 125] the latter zone, subject to maximum amounts on particular commodities and to flat increases on others. These increases became effective August 21, 1948. In the meantime certain interim increases authorized in Ex Parte No. 166, on October 6 and December 29, 1947, and April 13, 1948, had become effective on interstate traffic on October 13, 1947, January 5, 1948, and May 6, 1948, respectively, which interim increases were superseded by the above-described general increases.

On October 8, 1947, and January 2, April 23, and August 3, 1948, respondents filed petitions with the Florida commission seeking increases in the intrastate rates and charges corresponding in all respects with those approved in Ex Parte No. 166. Respondents further sought modification of the Florida commission's order of March 11, 1947, so as to authorize the Ex Parte 162 increases on the commodities excepted from those increases by that order.

The report of December 29, 1947, in Ex Parte 166, *270 I.C.C. 81, had authorized an interim increase of 20 percent* on interstate traffic in the South, with certain exceptions. On April 9, 1948, the Florida commission authorized corresponding interim increases on intrastate traffic with the following exceptions. *No increase was authorized on (a) wastewood, stumps, limbs, etc., moving to Pensacola, Fla.; (b) sugar cane from the fields to the mill, (c) fertilizer and fertilizer materials, and (d) dolomite or ground agricultural limestone. On road aggregates the authorized intrastate increase was 10 percent, maximum 30 cents per net ton,*

instead of the increase sought, namely 20 percent, maximum 30 cents per net ton. On intrastate class rates, and rates made in relation thereto, the increase authorized was *10¼ percent instead of 20 percent as sought*. By its order of November 13, 1948, entered after the final report in Ex Parte [fol. 126] No. 166, the Florida commission (a) denied a general increase of 25 percent in lieu of the 20 percent increase authorized by it on April 9, 1948; (b) denied the Ex Parte 162 increase on commodities excepted in its order of March 11, 1947; (c) extended the expiration date of the interim increases authorized by it on April 9, 1948; (d) continued all exceptions provided in the order of April 9, 1948; (e) revised the intrastate class-rate scales so as to reflect the interim interstate scales as increased 20 percent under the report of December 29, 1947, in Ex Parte 166, but not as subsequently increased in the final report in Ex Parte 166; (f) removed the increase authorized on April 9, 1948, on phosphatic sand and clay; and (g) considered sulphur a fertilizer or fertilizer material on which no increase was authorized on April 9, 1948.

At the hearing herein, and subsequently, *respondents requested that rates on sand, gravel, crushed stone, etc., commonly called road aggregates, be considered as withdrawn from this investigation, also rates on fertilizer and fertilizer materials between points on the Florida East Coast Railway, and, if interstate and intrastate tariffs which have been filed become effective, rates on petroleum and its products and sulphuric acid in tank-car loads, and canned goods and composition roofing or building materials, in carloads.* With the foregoing exceptions, respondents are here seeking increases in Florida intrastate rates and charges corresponding to those authorized in Ex Parte 162 and 166.

Subsequent to the increases approved in Ex Parte 162 and 166, increases in interstate rates and charges were authorized in *Increased Freight Rates, 1948, 276 I.C.C. 9, decided August 2, 1949*, and referred to as Ex Parte No. 168. Respondents' petition and the evidence of record deal solely [fol. 127] with rates and charges prior to the Ex Parte 168 increases. Our findings, therefore, will be limited accordingly.

As previously indicated, substantial portions of the Ex Parte 162 and 166 increases have not been made effective

on Florida intrastate traffic. Except as previously noted, respondents seek the remainder of the Ex Parte 162 and 166 increases. They estimate that the annual revenue thus lost *to them on Florida intrastate traffic approximates $915,325.* From 16.6 to 28.1 percent of the revenue received by the principal respondents, respectively, for transporting freight in Florida is derived from intrastate traffic.

Class rates.—Prior to *Southern Class Rate Investigation, 100 I.C.C. 513,* and supplemental reports, referred to as No. 13494, many inconsistencies were reflected in the class rates throughout southern territory. In that investigation, transportation conditions were found to warrant the establishment of a uniform basis of maximum reasonable class rates for all so-called standard railroads throughout the South, except between points in Virginia and points in North Carolina and except to and from points in the Florida peninsula.[4] Through cooperation between the various State regulatory bodies and this Commission, rates on the uniform basis prescribed in that proceeding were established for both interstate and intrastate application throughout the southern States, effective *in general on January 15, 1928.* Thereafter, except in the States of Georgia and Alabama for a portion of this period, and except for certain reductions required by us in the so-called border areas, generally for distances up to 190 miles, which reductions were later voluntarily extended by respondents to Florida interstate and intrastate traffic, a uniform adjustment was maintained on [fol. 128] class-rate traffic on railroads throughout the South.

In authorizing the southern class-rate adjustment with arbitraries for the haul in the Florida peninsula, the Florida commission excepted a few commodities as to which the old system of intrastate class rates are still applicable. On October 18, 1935, for competitive reasons, respondents generally waived the peninsular intrastate arbitraries on articles rated 7th class or higher. Following this action, the intrastate rates involved reflected a differential under the interstate rates. The No. 13494 class rates were increased 20 percent under Ex Parte No. 162. However, in making the

[4] South of the Seaboard from Jacksonville to Chattahoochee (formerly River Junction), Fla.

No. 28300 reduction of 10 percent, and increasing that basis 22.5 percent under Ex Parte No. 162, effective August 22, 1947, on articles moving under classification ratings and not including exceptions, respondents used the normal rates for interstate and intrastate traffic without such waiver of arbitraries. The Florida commission had granted the full increase comparable to the increases in Ex Parte No. 162. Respondents' action was in harmony with our ruling previously made in No. 28300 in connection with certain other subnormal and depressed class rates *(264 I.C.C., 41, 47, et seq.)*.

On January 5, 1948, in making the Ex Parte 166 interim increase of 20 percent on interstate traffic, respondents used the No. 13494 basis, subject as maximum to the No. 28300 basis without waiver of arbitraries. The Florida commission on April 9, 1948, authorized class rate increases of 10¼ percent in connection with both the No. 13494 and No. 28300 rates, which increases were established on April 28, 1948. On May 6, 1948, the 25 percent general increase superseded the 20 percent increase on interstate traffic. Thereafter, in lieu of the increases authorized on April 9, 1948, the Florida commission on November 13, 1948, authorized a 20 percent [fol. 129] increase in No. 13494 rates and prescribed a new scale of rates in lieu of the No. 28300 basis. The latter scale reflected a 22½ percent increase under Ex Parte 162 and a 20 percent increase under Ex Parte 166. By this action, respondents apparently were forced, in effect, to again waive the peninsular intrastate arbitraries on articles moving under classification ratings 7th class (or column 35 R or V) or higher. The foregoing authorized increases in intrastate rates became effective December 7, 1948. Thus, the substantial differences here complained of between the interstate rates as increased under Ex Parte 166 and the Florida intrastate rates resulted.

Respondents, in effect, propose herein to again restore the arbitraries as above described. For example, on traffic governed by classification ratings under No. 28300 from Thomasville, Ga., to St. Petersburg, 282 miles, the first class interstate rate of $1.70, effective August 22, 1947, was increased to $2.13 on December 7, 1948, and would not be affected by respondents' proposal; whereas from Tallahassee, Fla., to St. Petersburg, 281 miles, the first class

intrastate rate of $1.61 on August 22, 1947, was increased to $1.752 on December 7, 1948, and would become $2.01 under respondents' proposal. Under this proposal, the intrastate rate still would be on a lower level than the corresponding interstate rate.

On the No. 13494 intrastate class rates, governed by exceptions, respondents apparently had made no attempt to restore the intrastate arbitraries on the higher classes, which arbitraries had been waived on October 18, 1935. [fol. 130] Under respondents' proposal herein, such intrastate rates will still reflect a differential under the interstate rates for like distances and comparable hauls in the Florida peninsula. On the other hand, on the lower classes, both under No. 28300 and No. 13494, the peninsular arbitraries, both State and interstate, never have been waived.

Of course, no peninsular arbitraries have applied in the Southeast generally or in portions of Florida other than the peninsula. Thus, interstate and intrastate rates which are subject to the arbitraries naturally are higher than corresponding interstate and intrastate rates which are not subject thereto.

Due to the various revisions referred to, the difference in interstate and intrastate rate increases, here complained of, vary depending upon (a) the portion of the State where the movement takes place, (b) whether the traffic moves under the classification proper or under exceptions, (c) whether the peninsular arbitraries have been waived on the particular traffic, and (d) the length of the intrastate haul in the peninsula as compared with an interstate movement as to which only a portion of the haul is in the peninsula. The postwar percentage increases have increased the peninsular arbitraries in cents per 100 pounds.

Less carload traffic generally moves at the class rates. An analysis of a cost study of less-than-carload traffic in the original report in No. 28300, revealed the fact that less-than-carload traffic generally in all the territories was not bearing its proper share of the costs of transportation. In fact, excluding wartime loading, it was not yielding, on the average, its out-of-pocket costs plus constant expenses solely related to this traffic, plus the cost of collection and delivery, in any territory except possibly in the southern where the

[fol. 131] margin of difference between revenues and these expenses was slight.

In numerous instances less carload shipments were made from both interstate and intrastate origins to the same Florida destinations. There were 155 Florida destinations in this category. Some 80 specified commodities moved from both intrastate and interstate origins to Florida destinations. Based upon a traffic study made by respondents of less carload shipments terminated on their lines in Florida for a period of 1 week in October 1948, they estimated their annual revenue loss by reason of the relatively lower Florida intrastate rates as applied on such shipments at $43,588. These and similar estimates are based upon the assumption that no important changes will result in the traffic volume as it existed in the test period.

Commodity rates.—Respondents submitted statements in considerable detail showing the consist of interstate and State shipments handled by them in Florida. Shipments in numerous instances were made from both intrastate and interstate origins to the same Florida destination. In that category, the more important commodities are baskets and hampers, brick, cement, crate material, fertilizer and fertilizer materials, lime, logs, lumber, plaster, poles, pulpwood, tin cans, and wastewood. In numerous proceedings we have prescribed or approved reasonable interstate rates on these and a large number of other commodities which move from, to, or between points in Florida. The commodities which will be dealt with separately move in substantial volume at commodity rates from, to, or between points in Florida, both intrastate and interstate.

Agricultural limestone.—On interstate shipments of agricultural limestone, in closed equipment, to Florida destinations, the arbitraries per net ton added for representative [fol. 132] distances in the peninsula are 22 cents for 30 miles, 44 cents for 100 miles, 66 cents for 200 miles, and 83 cents for 300 miles. The arbitraries, as such, are not added to the State rates. For distances ranging from 230 to 600 miles, however, the north Florida scale is lower than the south Florida scale by amounts ranging from 22 to 61 cents. The interstate arbitraries for those distances range from 77 to 94 cents. The State rates were increased in amounts

corresponding to the Ex Parte 162 increases, but no increases were permitted corresponding to those authorized in Ex Parte 166. Present intrastate rates per net ton between Florida points, as compared with the interstate basis proposed herein, follow: From Crystal River to Clearwater, 97 miles, $1.375 versus $1.55; Lebanon to Cocoa-Rockledge, 216 miles, $1.84 versus $2.30; Dolomite to Fort Lauderdale, 263 miles, $2.222 versus $2.32; and Dolomite to Winter Haven, 85 miles, $1.375 versus $1.55. Competing interstate shipments to Florida destinations, including Miami and Winter Haven, were made from points in Tennessee, Missouri, Alabama, and Georgia at rates as high as $6.49 per net ton. Diversions from rails to trucks by two Florida producers, however, have increased to 15 and 30 percent, respectively. Protestants are of the opinion that increased rates would probably curtail the use of this limestone as a fertilizer or as an ingredient in commercial fertilizer. *This opinion appears purely conjectural*, however, when consideration is given to the long interstate hauls mentioned. Making due allowance for the interstate arbitraries, the proposed increased intrastate rates would not exceed the interstate basis of rates from interstate points to destinations in the Florida peninsula.

Fertilizer and fertilizer materials.—Great quantities of fertilizer are essential to the production of vegetables and fruit in Florida, which State uses from 2 to 8 times as much [fol. 133] fertilizer per crop acre as nine other specified southern States. Maximum reasonable distance rates for general application on fertilizer and fertilizer materials between points in the South with a minimum of 40,000 pounds were prescribed in *Fertilizers Between Southern Points*, 113 I.C.C. 389. This scale generally was established on both interstate and intrastate traffic in the South and contains no arbitraries for the Florida peninsula. Except for two substantial reductions in the rates for distances up to 300 and 280 miles, respectively, generally made to meet truck competition and graded to meet the original scale at 390 miles, these distance rates, as modified by subsequent general increases, are still applicable to interstate traffic. On intrastate traffic, however, by reason of the greater rate increase on interstate traffic than on Florida intrastate traffic, the

rate differences generally range from 15 cents to $1.61 per ton for corresponding minimum weights and distances.

On fertilizer materials moving intrastate, 75 percent of column M rates, minimum 40,000 pounds, with higher rates for joint-line hauls, alternate with so-called distance scales A, B, and D, which scales apply on fertilizer and fertilizer materials, minima 60,000, 40,000 and 40,000 pounds, respectively. Generally speaking, scale A applies in northern Florida, scale B applies in peninsular Florida, excepting generally where scale D applies, and scale D applies generally in southeast Florida, including certain joint hauls in connection with the East coast, and at stations in the vicinity of Lake Okeechobee. Representative rates above described, local rates on the East coast, and comparable interstate rates, minimum 60,000 pounds, appear in the following table, wherein the present rates are stated in cents per net ton. The interstate rates, minimum 60,000 pounds, alternate with certain higher interstate rates, [fol. 134] minimum 40,000 pounds, applicable to and from southern Florida. Rates under the headings Scale D and East coast reflect 75 cents per ton allowance made to consignee under tariff provisions.

Distance Miles	75% Basis Cents	Scale A Cents	Scale B Cents	Scale D Cents	East coast Cents	Interstate Cents
50	208*	102	102	143*	123	128
100	257*	162	162	223*	195	203
150	290*	222	222	289*	255	278
170	313*	246	246	315*	279	308
200	313	282	282	347	309	353
300	324	414	414	447	399	518
400	346	552	564	532	477	690**
480	380	600	660	585	525	750

* Higher than the interstate rates.

** Interstate rate to and from southern Florida is 705 cents.

In many instances, the carriers' proposed intrastate rates would exceed the interstate basis particularly the proposed scale D rates for distances from 25 to 360 miles. The proposed scale D rates, of course, are even higher than the present rates shown in the table. On the other hand, specific examples show the movement of fertilizer and fertilizer materials from intrastate and numerous interstate points of origin frequently to the same destination in Florida and the respective rate adjustments, indicating

the disadvantage to interstate points caused by these differences in rate levels. Despite the general increases, the Coast Line's system tonnage and revenue on fertilizers and fertilizer materials increased 5.35 and 15.23 percent, respectively, for the first three months, 1949 versus 1948.

Sulphur was listed under fertilizer and fertilizer materials in the Florida intrastate tariffs at rates considerably lower than the interstate rates on sulphur for corresponding distances, especially if the interstate rates were subject to the Florida peninsular arbitraries on hauls partly in the peninsula.

[fol. 135] The present interstate scale in the South is lower for all distances than the scale prescribed in *Eastern Fertilizer Cases*, 198 I.C.C. 483, 203 I.C.C. 787, on basis of 22.5 percent of first class between points in trunk-line territory; and the southern scale is lower for distances of 600 miles and less than the scale prescribed in the report on further hearing in *Ohio Farm Bureau Federation* v. *Ahnapee & W. Ry. Co.*, 146 I.C.C. 419, for application between points in central territory. However, for some (not all) distances greater than 680 miles up to 800 miles, the maximum distance under the latter scale, that scale is slightly lower than the southern scale. For distances of 300 miles and less, the southern scale is much lower than either the central-territory scale or the trunk-line scale. The trunk-line and central territory scales are subject to a minimum of 40,000 pounds, while the southern scale is subject to a minimum of 60,000 pounds.

As previously stated herein, respondents are not seeking increases in Florida intrastate single-line rates on fertilizer and fertilizer materials between points on the Florida East Coast Railway. That carrier felt that a further increase in its rates would cause a diversion of this traffic from its rails. The increases sought in other rates are 25 percent, maximum $1.60 a ton, corresponding to those authorized in Ex Parte 166. Our findings herein do not contemplate the establishment of any single-line intrastate rates on a basis higher than the level of the corresponding rates maintained by the Florida East Coast Railway.

Logs.—In lieu of (1) no increase corresponding to the Ex Parte 162 interstate increases and (2) the 20 percent

increase partially corresponding to the 25 percent Ex Parte 166 interstate increases, as authorized by the Florida commission, respondents seek on intrastate traffic increases [fol. 136] corresponding to the full amount of the interstate increases authorized in Ex Parte 162 and Ex Parte 166.

Generally speaking, on the Coast Line, the Florida intrastate rates on logs, except cedar, range from 0.7 cent to 13.9 cents lower than the present equivalent of the distance rates approved as reasonable for application on interstate log traffic between numerous points in southern territory in *Farris Hardwood Lbr. Co.* v. *Louisville & N. R. Co.*, 178 I.C.C. 671. The net transit intrastate rates maintained by the Coast Line and the Seaboard, and the trainload rates of the Coast Line, are even lower than the corresponding intrastate distance scales of local rates.

The record shows a heavy movement of logs from Bainbridge, Ogletlorpe, and Quitman, Ga., respectively, to Jasper, Fla., 136, 147, and 48 miles, at rates of 11.5, 18, and 9 cents; also a heavy movement from Perry and Trenton, Fla., respectively, to Jasper, 60 and 74 miles, at intrastate rates of 40.2 cents and per car rates equivalent to approximately 5.4 cents. The intrastate rates proposed from Perry and Trenton are 11 cents and the equivalent of about 6.7 cents, respectively.

One shipper, in order to reduce transportation costs, has moved his plant from Jacksonville to the woods in West Florida. A few other shippers receive more logs by truck than by rail. The trucking of lumber appears to be more prevalent than the trucking of logs, however. Another large shipper has his own logging road. Respondents, of course, cannot meet all of these situations, but, in an effort to do so, the Coast Line has established very low intrastate trainload rates from and to specified points, hereinafter described.

In *Farris Hardwood Lbr. Co.* v. *Louisville & N. R. Co.*, *supra*, we prescribed reasonable single-line and joint-line distance scales of rates on logs, in carloads, from points in [fol. 137] southern territory, not including points in Florida south of the line of the Seaboard Air Line Railway Company from Jacksonville to River Junction, to certain points in Tennessee for distances to and including 800 miles. The

prescribed single-line rates were 2.5 cents per 100 pounds lower than the corresponding joint-line rates. The proceeding was comprehensive in its scope and resulted in a general readjustment of rates over an extensive territory. The rates under the joint-line scale therein prescribed, as modified by the subsequent general increases, are in most instances the same as the official territory rates for like distances and, in other instances, are either 1 cent higher or lower than such rates.

The distance-scale basis prescribed in *Farris Hardwood Lbr. Co.* v. *Louisville & N. R. Co., supra,* was subsequently prescribed in a number of other proceedings for application between points in other sections of southern territory, and to points in that territory from origins in official territory. See *Pulaski Veneer Corp.* v. *Atlantic & Y. Ry. Co.,* 258 I. C. C. 706, and 259 I. C. C. 313, and the decisions therein cited.

The following table is representative and shows (1) Coast Line local Florida intrastate rates, minimum 40,000 pounds, on certain logs over 6 feet in length; (2) so-called Florida P-1 maximum rates on logs generally, minimum 30,000 pounds; (3) Coast Line net transit intrastate rates, which are lower than the local rates; (4) normal local interstate rates maintained by the Coast Line, Seaboard, and Southern Railway Company on certain logs, minimum 40,000 pounds, which are higher than the interstate net transit rates; (5) interstate rates on the basis of *Farris Hardwood Lbr. Co.* v. *Louisville & N. R. Co., supra,* minimum 40,000 pounds.

[fol. 138]

Distance Miles	Local Intrastate Cents	P–1 Intrastate Cents	Net transit Intrastate Cents	Normal Interstate Cents	Farris Scale Cents
50	5.7	5.46	3.3	7.5	9
80	7.2	6.72	4.5	9	11.5
100	7.8	7.56	4.5	10	12.5
150	9.6	9.24	5.7	12.5	15
170	10.2	10.5	6.3	14	16

The interstate net transit rates are higher than the corresponding intrastate net transit rates. The Coast Line maintains much lower intrastate rates on certain logs, in trainloads between specified points. The trainload rates apply per carload regardless of weight and decrease in a

graduated scale according to the number of trainloads of 28 cars or more shipped per calendar month. In one instance, the trainload rate proposed herein would yield $20.25 per car of 60,000 pounds as compared with $45 under the normal interstate scale. Respondents are not seeking increases to the interstate bases, but merely increases corresponding with the full amounts of the interstate increases authorized in Ex Parte 162 and Ex Parte 166.

Lumber.—In lieu of the 20 percent increase on lumber authorized by the Florida commission, respondents seek no more than the full amount of the 25 percent increase authorized in Ex Parte 166 and now applicable to interstate traffic. For distances from 10 to 700 miles, the Florida intrastate rates on lumber range from 0.8 cent to 14 cents lower than the present equivalent of the distance rates approved as reasonable for application on lumber between numerous points in southern territory in *Adams-Bank Lbr. Co.* v. *Aberdeen & R. R. Co.*, 157 I. C. C. 280. Rates on lumber substantially higher than those in effect in Florida also were prescribed as reasonable for the South in other proceedings including *Johnson-Battle Lbr. Co.* v. *Seaboard Air Line Ry. Co.*, 198 I. C. C. 796, and *Georgia Veneer & Pack-*
[fol. 139] *age Co.* v. *A. C. L. R. Co.*, 206 I. C. C. 566.

Destinations in Florida receiving lumber from competing intrastate and interstate origins include Apoka, Auburndale, Barton, Belleglade-Chosen, Bradenton, Chattahoochee, Clearwater, Clermont, Cocoa-Rockledge, Coconut Grove, and numerous other destinations. From Blountstown and Chipley, Fla., to Coconut Grove, 569 and 552 miles, for example, the present intrastate rate is 34.8 cents and the rate proposed by respondents herein is 36 cents, as compared with an interstate rate of 45 cents from Macon, Ga., to Fort Lauderdale, Fla., 569 miles. From Archer, Fla., to Coconut Grove, 342 miles, the intrastate rate is 24 cents and the proposed rate is 25 cents, as compared with interstate rates of 31 cents from Roanoke, Ala., to Gainesville, Fla., 347 miles, and 33 cents from Cordele, Ga., to Cocoa-Rockledge, Fla., 357 miles. From Tallahassee, Fla., to Jacksonville, 166 miles, the intrastate rate is 15.6 cents and the proposed rate is 16 cents, as compared with the interstate rate of 20 cents from Milan, Ga., to Jacksonville, 167 miles.

A substantial amount of lumber is now being handled by truck. Nevertheless, the record shows substantial movements, during the test periods for four weeks, at interstate rates which have received the general increases and are upon a substantially higher level than the intrastate level of rates proposed herein.

* * * In *Lumber Between Points in Official Territory*, 214 I. C. C. 493, division 2 said at page 520:

* * * * * * *

> The scale prescribed in *Adams-Bank Lbr. Co.* v. *Aberdeen & R. R. Co.*, 157 I. C. C. 280, is a standard by which rates on lumber in the South are measured. It was prescribed for application between North Carolina and South Carolina, and also with respect to rates from the Mississippi Valley to the Carolinas. That scale is generally from 2 to 4 cents lower than the official-territory [fol. 140] sixth-class scale. The Adams-Bank Scale has been recognized by the Commission as a standard of reasonableness in numerous cases involving rates on lumber and forest products within the South. *Georgia Veneer & Package Co.* v. *A. C. L. R. Co.*, 206 I. C. C. 566, and cases cited therein.

The following table shows representative rates (1) intrastate within Florida with minima of 34,000 and 24,000 pounds, respectively, (2) interstate in the South generally in effect under the so-called compromise scale, minimum generally 34,000 pounds, and (3) interstate joint-line and single-line rates, minimum generally 34,000 pounds, upon the basis prescribed in *Adams-Bank Lbr. Co.* v. *Aberdeen & R. R. Co., supra.*

	Florida		Compromise	Adams-Bank	
Distance Miles	34,000 lbs. Cents	24,000 lbs. Cents	Scale Cents	Single Cents	Joint Cents
50	9.6	12	10.5	14	18
100	11.4	15.6	14	18	20
200	16.8	20.4	21	25	25
300	21.6	27.6	29	33	33
400	26.4	33.6	36	39	39
500	31.2	38.4	43	44	44

The compromise scale on lumber in the South is lower than the scale in official territory except that for a few of

the longer distances the rates under the two scales are the same.

There are numerous intrastate truck competitive rates within Florida, particularly to Jacksonville. Protestants refer to numerous interstate truck competitive rates in the South which are lower than the so-called compromise scale, but such rates apply to comparatively few points in Florida, principally to Jacksonville. The interstate truck competitive rates to Florida destinations, and certain interstate rates to Florida ports, are an exception and do not represent the interstate basis generally in effect to and from Florida.

Respondents estimated that the increases proposed on lumber, box and crate material, and cross ties, would pro- [fol. 141] duce an additional amount of $56,509 annually.

Phosphate Rock.—The Florida intrastate rates on dry phosphate rock, other than ground, for distances of 139 miles and less, range from 27 to 106 cents lower than the present equivalent of 75 percent of the scale of rates on fertilizer and fertilizer materials authorized by us in *Fertilizer Between Southern Points, supra.* The interstate rates on phosphate rock generally are on the 75 percent basis except where lower rates are necessary on account of water competition. That basis was approved on shipments from Florida to certain destinations in Alabama, Georgia, South Carolina, and Tennessee in *International Minerals & Chemical Corp.* v. *A. C. L. R. Co.*, 269 I. C. C. 611, in which report reference was made to similar findings in *Missouri Chemical Co.* v. *Atlantic Coast Line R. Co.*, 268 I. C. C. 94, *Armour and Co.* v. *Aberdeen & R. R. Co.*, 268 I. C. C. 502, and *Diamond Fertilizer Co.* v. *Aberdeen & R. R. Co.*, 256 I. C. C. 747 and 259 I. C. C. 75. For distances over 139 miles, respondents have published specific intrastate commodity rates to Florida points to which there is a substantial movement, which rates do not exceed the interstate level.

The net transit rates on wet phosphate rock from the Florida mines or washers to nearby drying plants are 13.2 cents per ton of 2,240 pounds on intrastate traffic as compared with 16 cents on interstate traffic, yielding $6.48 and $7.86 per average car, respectively. Both of these charges

are lower than net transit rates on various other commodities and lower than various charges for intra-plant, intra-terminal and inter-terminal crosstown switching at points in Florida.

Pulpwood.—On pulpwood, respondents seek an increase of 20 percent, maximum 8 cents, corresponding to the increases in Ex Parte 162, instead of the increase of 9 percent [fol. 142] authorized by the Florida authorities. The increase sought corresponding to the Ex Parte 166 increase is 25 percent, instead of 20 percent as authorized on Florida intrastate traffic. Florida destinations receiving a heavy volume of pulpwood from competing intrastate and interstate points include Fernandina, Jacksonville, North Pensacola, Pensacola, and Port St. Joe. The maximum movement from interstate or intrastate origins to the same Florida destinations during the test period apparently was 288 miles. Due to the short hauls, and certain physical and rate advantages, an increasing amount of tonnage has been diverted from rails to truck. Respondents, however, are confronted with practically the same short-haul situation with respect to both interstate and intrastate truck competition. There is a heavy movement to Florida at interstate rates which have been increased under Ex Parte 162 and Ex Parte 166.

From Umatilla to Fernandina, 189 miles, the intrastate rate per unit of 168 cubic feet is $5.346 and the rate proposed is $6.125, as compared with the interstate rate of $4.59 from Collins, Ga., to Fernandina, 186 miles. From Colfax to Fernandina, 91 miles, the intrastate rate is $4.254 and the rate proposed is $4.875, as compared with the interstate rate of $3.35 from Riceboro, Ga., to Fernandina, 94 miles. In these particular instances, the interstate rates are on a lower basis than the proposed intrastate rates.

In *Pulpwood, North Carolina and Virginia to Cypress, Va.*, 235 I. C. C. 11, at page 13, division 3 stated:

> The Roanoke Rapids scale, established by the Seaboard Air Line into Roanoke Rapids, N. C., in 1909, is a depressed basis and is maintained by the southern carriers for single-line application on pulpwood from origins on their lines to southern consuming points. It is essentially a transit scale, put into effect on the

tacit understanding that a carrier transporting pulpwood to a mill shall be given the outbound products manufactured therefrom for transportation to the markets.

[fol. 143] The Roanoke Rapids scale is substantially lower than the scale applicable in eastern territory. The following table is representative and shows (1) Florida intrastate rates under the 1/10 of class P basis; (2) intrastate rates under the Roanoke Rapids basis with increases allowed in Florida; and (3) interstate rates under the Roanoke Rapids basis which rates are proposed herein for intrastate application. These rates are on basis of units of 160 cubic feet.

Distance Miles	1/10 of Class P	Intrastate scale Roanoke Rapids	Interstate scale Roanoke Rapids
50	$2.34	$2.03	$2.33
100	3.24	2.78	3.20
150	3.96	3.29	3.76
200	4.39	4.04	4.64
300	5.30	5.35	6.14
400	....	6.66	7.64

The Florida intrastate rates on pulpwood generally were based on the Roanoke Rapids scale. They now range from 18 to 99 cents lower, per unit of 160 cubic feet, than the present equivalent of that scale on interstate traffic. The foregoing intrastate rates on pulpwood are relatively lower than rates on such low grade commodities as sand, gravel, and crushed stone adopted as a compromise between shippers and carriers throughout the South.

Many of the Florida intrastate rates, however, were not based on the Roanoke Rapids scale, but, instead, were on the 1/10 of Class P basis which was higher for most single-line hauls particularly those under 210 miles and considerably higher for two-line and three-line application. Respondents made no real effort to justify increases on pulpwood moving under the higher intrastate scales and there is no warrant upon this record for any increases in intrastate rates which would cause those rates to exceed the [fol. 144] Roanoke Rapids scale increased 20 percent, maximum 8 cents per 100 pounds, corresponding to the Ex

Parte 162 increase, and 25 percent, without maximum, corresponding to the Ex Parte 166 increase.

Resinous Wastewood.—Resinous wastewood consists of old pine stumps, knots, butts, limbs, and boughs from which naval stores are produced by a steam distillation process. It requires 5 tons or more of this wood to produce a ton of naval stores. No increases in intrastate rates were authorized corresponding to the 20 percent Ex Parte 162 increases. Increases corresponding to the 25 percent Ex Parte 166 increases were limited to 20 percent, with the exception that no increase following Ex Parte 166 was authorized on intrastate movements to Pensacola, Fla. Increases corresponding to those in Ex Parte 162 and 166 were allowed by the State authorities of Georgia, Mississippi, North Carolina, South Carolina, and Tennessee.

A large volume of this wood moves in interstate commerce to Florida points. For example, during the second week in each quarter of 1948, Brewton, Florala, and Wallace, Ala., each shipped nearly 2 million pounds of wastewood to Pensacola. The interstate rate of 5.75 cents from Brewton and Wallace to Pensacola, 57 and 43 miles, respectively, is compared with the present intrastate rate of 3.25 cents, and the rate sought herein of 5 cents, from Gallivers, Fla., to Pensacola, 50 miles. The interstate rate of 7 cents from Florala to Pensacola, 77 miles, is compared with the present intrastate rate of 7 cents, and the rate sought of 10.75 cents for the much longer haul from Youngstown, Fla., to Pensacola, 157 miles.

Group rates apply from certain stations in Alabama and Florida to Pensacola. At the group boundary are Pine, Fla., and Atmore, Ala., only 7 miles apart. The interstate rate from Atmore is 93 cents as compared with the intrastate rates from Pine of 50 cents now applicable and 75 [fol. 145] cents sought. On the average, the difference in distance from the two groups is about 38 miles. The rate differential was 12 cents on June 30, 1946, as compared with 43 cents at present and 18 cents at the basis sought herein. According to protestant, the largest single interstate movement to or from Florida is that from northeastern and north central Florida to Brunswick, Ga. There is also a heavy intrastate movement within Georgia.

The interstate rates to Pensacola compare favorably with the present equivalent of rates from Coast Line stations in Georgia to Jacksonville, approved in *Waste Resinous Wood*, 77 I. C. C. 448. Rates lower than that basis, however, now apply from certain points in southern Georgia to Jacksonville based on the so-called Georgia single line scale for a minimum of 40,000 pounds. Under that scale, the rates for 50 miles and 167 miles are 5.75 and 7 cents, respectively, as compared with the foregoing Florida intrastate applicable rates of 3.25 and 7 cents and rates sought of 5 and 10.75 cents, respectively. The rates from these southern Georgia points to Jacksonville, however, are on a lower basis than, and therefore are not representative of, the basis generally maintained on interstate traffic to and from Florida. The lowest basis generally maintained on interstate traffic to and from Florida is that, hereinafter described, from northeastern and north central Florida to Brunswick.

For distances from 30 to 260 miles, for example, single-line distance scales, minimum 40,000 pounds, generally applicable in Florida as well as two scales, minima 40,000 and 60,000 pounds, applicable from Florida points to Gainesville, Fla., as increased according to the Ex Parte 162 and Ex Parte 166 increases, generally would yield lower per car charges, based on minimum weights, than such charges under the interstate scale, minimum 60,000 pounds, from Coast Line origins in Florida to Brunswick, as likewise increased. As previously indicated, there is a heavy movement from and to the latter points. Based on carloads of 60,000 pounds, the single-line interstate charges to Brunswick would be lower, however, than the proposed in-[fol. 146] trastate charges to Pensacola, although somewhat higher than the proposed intrastate charges to Gainesville. Moreover, certain proposed joint-line intrastate rates, on cars containing 60,000 pounds, are higher than certain interstate rates.

It will be understood, as hereinafter stated, that the only increase in the intrastate rates, which is contemplated by our findings herein, is an amount sufficient to bring such rates up to a level not exceeding the corresponding rates generally in effect on interstate traffic to or from Florida

after giving due consideration to the minimum weights and to the peninsular arbitraries where applicable for hauls or portions of hauls within the peninsula. Under our findings, the increased intrastate rates, minimum 40,000 pounds, will alternate with lower intrastate rates, minimum 60,000 pounds.

Sugar Cane.—Refusal of the Florida Commission to permit increases in the intrastate rates on sugar cane has resulted in an estimated annual loss of revenue of the Coast Line and the East Coast amounting to $183,066. This cane is shipped from points south and southeast of Lake Okeechobee, milled by the United States Sugar Corporation at Clewiston, Fla., and the outbound products are raw sugar, blackstrap molasses, and some cane pith dehydrated. All of the sugar moves interstate to Port Wentworth (Savannah), Ga. The molasses moves intrastate and interstate. The local intrastate rates on the cane are on a distance basis prescribed by the Florida commission but have not been used because a very much lower intrastate transit distance scale applies on the cane upon condition that the respective inbound carriers will receive the haul on the outbound product. An interstate transit tariff carrying these net transit rates, with the general increases added, was filed with us. The operation of this tariff was suspended in [fol. 147] I. & S. Docket No. 5646, heard immediately after the instant proceeding. Regardless of the action in the suspension proceeding, a portion of the outbound product, consisting of molasses, will continue to move in intrastate commerce. The record indicates that the only interstate movement of sugar cane is that within Florida hereinafter considered in the suspension proceeding. The intrastate rate situation will be considered in connection therewith. It may be stated here, however, that the facts of record will not support a finding that the present unused local intrastate rates on sugar cane should be increased except as necessary to observe as a minimum the Florida intrastate transit rates increased as herein authorized.

Miscellaneous Commodities.—With respect to intrastate rates which with the increases sought by respondents will not be on a higher level than the corresponding interstate rates, the previous discussion herein, relating to the more

important commodities, is fairly representative of the relative situation, intrastate compared with interstate, disclosed in the record concerning numerous commodities which move under the rates in issue. Exhibits show in detail the intrastate rate on practically every commodity of any importance moving in Florida as compared with interstate rates for comparable hauls of the same commodities.

Important commodities include those previously mentioned and tin cans, plaster, asphalt, fiberboard boxes, brick, insecticides, lime, and livestock. The general basis of rates on plaster and asphalt is column 17.5, interstate and intrastate. Fiberboard boxes are on the column 27.5 basis. These and other column rates lower than 35R or V are subject to the peninsular arbitraries. On cement from and to numerous specified points, the amount of the peninsular arbitrary is the same on interstate and intrastate traffic. [fol. 148] Of course, intrastate and interstate rates which are subject to peninsular arbitraries are higher than intrastate and interstate rates which are not subject to those arbitraries.

On common brick from interstate points to the peninsula, the arbitrary in connection with distance rates generally in effect would be the same as from north Florida points thereto, except in instances where specific commodity rates apply from some Georgia origins, which commodity rates were established for specified competitive reasons. The general level of rates on insecticides in the South is column 26, minimum 40,000 pounds, or column 30, minimum 30,000 pounds. Class L rates apply intrastate in Florida. The present intrastate rates range from 11.2 to 18.2 percent of first class. On lime, the proposed intrastate rates generally would not exceed the interstate basis of rates to and from Florida, making allowance for differences in minima and peninsular arbitraries. According to respondents, the intrastate shippers have been unwilling in the past to forego the advantage of their low minimum of 24,000 pounds, as compared with interstate minima of 30,000 and 50,000 pounds.

To deal with each of the other commodities separately is not essential. It will suffice to find that, so far as appears on this record, the intrastate rates, with the addition of

the increases sought on these commodities, will in no instance be on a higher level than the corresponding interstate rates giving due consideration to differences in minima and to the peninsular arbitraries where applicable.

As previously indicated, it will be understood that the only increase in the intrastate rates on these or any other commodities which is contemplated by the finding herein is an amount sufficient to bring such rates up to a level not exceeding that in effect on interstate traffic to and from [fol. 149] Florida, giving appropriate consideration to the peninsular arbitraries where applicable.

Additional evidence supporting respondents.—The Pennsylvania-Dixie Cement Corporation introduced evidence for the purpose of showing that it was unduly prejudiced and disadvantaged by reason of the failure to increase the Florida intrastate rates on cement correspondingly with the interstate rates under Ex Parte 162 and Ex Parte 166. This shipper operates numerous cement mills, including one at Clinchfield, Ga., and two in Tennessee. It makes numerous shipments of cement to destinations throughout the State of Florida in competition with a cement mill located at Tampa, Fla., and it finds it increasingly difficult to compete with the intrastate shipper by reason of the relatively low intrastate rates.

Collectively, the evidence of this shipper and of respondents herein shows that on traffic generally the Florida intrastate rates are relatively lower than the interstate rates, and that the existing disparities, excepting those on sugar cane, will result in advantage to the Florida intrastate points and in serious disadvantage to interstate points. No good purpose would be served by adding to the foregoing further illustrations of rate inequalities. It is not necessary to deal with each individual rate for the purpose of supporting a State-wide order. In *Georgia Public Service Comm.* v. *United States*, 238 U. S. 765, at page 774, the Court said:

> When an investigation involves shipments from and to many places under varying conditions, typical instances justify general findings. * * * While the order relates to only a few commodities, the scales of rates are state-wide in operation; and they apply to shipments between hundreds of points of origin and

destination. To require specific evidence and separate adjudication in respect to each would be tantamount to denying the possibility of granting relief.

[fol. 150] *Additional evidence for protestants.*—The commodities dealt with by the protesting shippers include lumber, logs, pulpwood, fertilizer, phosphate rock, resinous wastewood, sugar cane, agricultural limestone and dolomite, asphalt, plaster, fiberboard boxes, insecticides, brick, cement, and lime. Certain shippers of agricultural limestone and certain other commodities request that no increase be required in the intrastate rates on such commodities for short distances on the ground that there is little likelihood of interstate movements of those commodities for short distances. While there may be no interstate movement of these particular articles from or to Florida for short distances, the record shows that there are other interstate movements to Florida. In numerous instances the intrastate and interstate movements were to the same or comparable Florida destinations.

Many protesting shippers, and certain short line railroads, which depend largely upon the log and lumber traffic, contend that the intrastate traffic will not bear an additional increase. The evidence in support of this contention is not entirely convincing. As stated in *Increases in Alabama Freight Rates and Charges, supra,* at page 459, it might be, as is usually the case when extensive rate changes occur, that increases in the intrastate rates would result in some traffic losses to respondents by reason of diversion of tonnage to other competing forms of transportation, but the opinion of one or more protestants that the railroads would receive less aggregate revenue than they are now receiving on certain *traffic is purely conjectural, and respondents' evidence is to the contrary.*

Truck competition.—The informed judgment of the Florida Railroad and Public Utilities Commission, was that increases in the rates on certain commodities would divert [fol. 151] such traffic from the rail lines and result in a loss of revenue rather than an increase. This conclusion was confirmed to a large extent by the action of respondents in withdrawing from this proceeding certain commodities including road aggregates, petroleum and its products, and, between points on the East Coast, fertilizer and its products,

and other commodities on which the increased revenue originally sought herein was estimated at $891,309. As previously indicated our findings herein contemplate no higher single-line rates on fertilizer than those maintained by the East Coast. A different situation, however, exists with respect to the remaining commodities. The record shows affirmatively that nearly all of such commodities are moving in volume from competing interstate points of origin to Florida destinations in most instances at rates considerably higher than those proposed herein for intrastate movements of the corresponding commodities. Moreover, despite the effect on volume of increased rates, respondents' net railway operation income for all operations in Florida for 3 months ended March 31, 1948, increased 26.6 percent over those for the corresponding period in 1947. The corresponding percentage for the year 1948 as compared with the year 1947 was 60.4 percent. Respondents' net railway operating income for freight in 1948 exceeded that for any previous year since 1935, with the exception of 1942. Expenses, of course, also increased during these periods.

The record indicates that the increases sought will result in intrastate rates under which there will be a substantial increase in revenue to respondents.

Peninsular arbitraries.—Other protesting shippers object to the arbitraries which apply in peninsular Florida. These arbitraries were prescribed on interstate class and commodity traffic in numerous interstate proceedings and, in [fol. 152] authorizing the general increases under Ex Parte 162 and Ex Parte 166, no exceptions were made with respect to the numerous rates which were subject thereto. They have been discussed herein at length under the subject of class rates. The record does not warrant any treatment in regard to rates subject to the peninsular arbitraries different from the treatment in regard to other rates here in issue. The situation in this respect is no different within Florida than from or to Florida. Under the issues herein, protestants apparently object, not primarily to the arbitraries, as such, but to the general increases in those arbitraries, and the consequent greater ton-mile revenues for operations in Florida than for operations elsewhere in the South. Between St. Petersburg, Fla., and 11 southeastern points, for

example, the interstate first class arbitrary, governed by exceptions ratings, has been increased on the average 11 cents since the Docket No. 13494 rates were established. The base rates, however, also have been increased by substantial amounts. With respect to base rates, the intrastate shippers generally are located so that their traffic moves shorter distances, hence they pay or absorb a lower rate, and are generally subjected to a lesser amount of increase thereon than the interstate shipper.

Aside from the instances referred to in the discussion of individual commodities, and taking into consideration comparable minimum weights and the peninsular arbitraries where applicable, the record indicates that the increases sought will result in intrastate rates which will in no instance exceed the corresponding interstate rates to or from Florida.

Relative transportation conditions.—Responsible operating witnesses of the Seaboard and the Coast Line, which carriers have the longest mileage in Florida and also operate in other southern States, testified that purely operating [fol. 153] conditions in Florida are no more favorable and even less favorable than those existing in adjacent States. For the Coast Line, Seaboard, and East Coast combined, (a) Florida operations, (b) system operations, and (c) operations of all carriers in the entire southern region, respectively, in 1947, the revenue tons per train-mile were 703.9, 724.2, and 843.1 tons; the revenue tons per locomotive mile-road were 688.7, 687.1, and 787.7 tons; the revenue tons per car-mile were 18.4, 17.3, and 19.4 tons; the freight operating ratios were 75.4, 75.6 and 72.3; and the passenger operating ratios were 112.8, 116, and 117.2.

Intrastate and interstate traffic in Florida is intermingled and carried in the same trains, whether through or local, on main and branch lines, and the same employees are engaged in handling both kinds of traffic. In fact, the cost of train operations is higher on intrastate than on interstate traffic by reason *of the fact that the preponderance of the intrastate traffic is in local trains; whereas the interstate traffic moves predominantly in through trains.* For example, the Coast Line *local train operating between* Jacksonville and Sanford from March 13 to 24, 1949, handled *127 intra-*

state cars and 51 interstate cars, whereas the through train operating between these points in that period *handled 55 intrastate and 106 interstate cars*. In both instances, all empty cars and some cars that may have been diverted later to interstate destinations were counted as intrastate cars. Moreover, this is an example of ordinary trains carrying all classes of traffic and not of trains devoted almost exclusively to one commodity, such as citrus fruit, vegetables, and road aggregates not involved herein, as well as logs, pulpwood, phosphate rock, and sugar cane which are involved herein. According to protestants, very [fol. 154] little phosphate moves intrastate, however.

Wages paid the crew and overtime worked are higher on the average for a local train than for a through train. During 1948 local train-miles as compared to total train-miles on the Seaboard were 61.9 percent on its south Florida division, 24.2 percent on its north Florida division, and only 21.5 percent for the system. In 1948, the cost, for example, of crew wages and fuel for 1,000 gross ton-miles on the two Florida divisions was 88 cents as compared with 74 cents for the remainder of the system. Because of shorter runs, overtime, the necessity of making up and breaking up ordinary local trains at each terminal, and various other factors of record, the unit cost of handling a given quantity of freight a certain distance in ordinary local trains is greater than the unit cost of handling a like quantity of traffic a like distance in through trains.

These facts lend support to numerous other facts of record showing that the unit cost of handling Florida intrastate traffic is at least as great as the cost of handling interstate traffic within Florida, including sugar cane, and interstate and export or import traffic from and to Florida points, including phosphate rock. Increases in recent years in growth of population and tonnage terminated and originated in Florida, and the agricultural and industrial conditions in Florida, as compared with certain other States, obviously bear alike to a considerable extent upon both the intrastate rates and the interstate rates to and from Florida.

In *Miami Bottled Gas, Inc.* v. *Abilene & S. Ry. Co.*, 274 I.C.C. 61, 68 division 3 stated:

> The excessive amount of empty car mileage which is performed in handling Florida traffic as compared with the Atlantic Coast Line system as a whole is illustrated by the following figures: In 1938 the percent of empty to loaded mileages in Florida was 76.6 percent, while for the system as a whole it was 61.8 percent; [fol. 155] in 1942 it was 72 and 57.7 percent, and in 1947, 69 and 49.5 percent, respectively.

From respondents' evidence in the instant proceeding a similar conclusion may be drawn. On the Seaboard, for example, the percentage of empty to loaded car mileage in 1948 on the lines in Florida was 136.57 percent of that on other portions of the system. The relative percentages of empty car mileages for interstate and intrastate traffic is not shown however.

Revenue needs of respondents.—The conclusions reached in Ex Parte No. 162 and Ex Parte No. 166 were based upon the need of the railroads generally, including respondents herein, for additional revenue to enable them to meet increased operating expenses, including increased wages of employees, the so-called payroll tax, and increased costs for materials and supplies. In 1948, the rate of return earned by the principal respondents herein on their property investment, including materials and supplies and cash as of the close of the periods for which computed, averaged 2.29 percent and on such investment less depreciation, 2.91 percent. In 1946, the corresponding figures for the Coast Line were 1.28 and 1.62 percent; those for the Seaboard were 3.91 and 4.91 percent; and those for the East Coast were 3.87 and 4.35 percent, respectively.

In 1947, without the general increases as made on interstate traffic and on most of the intrastate traffic, a net railway operating income of $13,383,693 earned by these three respondents would have been converted into a deficit of $16,871,215. As stated, the revenue loss as estimated by respondents because of the failure to authorize the increases herein sought is $915,325 a year. Obviously, the

great preponderance of this severe loss will fall upon the three principal respondents. The figures include no estimated revenue loss on certain smaller roads in Florida. [fol. 156] The estimated loss would have been increased accordingly if such roads had been included. During the first four months of 1949 as compared with the corresponding months in 1948, the railway operating income of the principal respondents declined 10 percent, as compared with 7.6 percent for other carriers in the southern region. During this period federal income taxes of the Coast Line and Seaboard increased $513,000.

Diversions to intrastate routes.—The record shows that the present Florida intrastate rates have caused the diversion of traffic, which normally moves over intrastate routes, to unnatural and in some instances more circuitous intrastate routes, thus causing an added burden upon interstate commerce. Typical illustrations of such diversions are of record. For example, with the formerly existing rate parity over intrastate and interstate routes, the Coast Line was able to secure large movements of traffic from Florida origins on its rails to Panama City and Port St. Joe, Fla. Following the refusal of the Florida Commission to authorize increases corresponding to those on interstate traffic in Ex Parte 162 and Ex Parte 166, the Coast Line was compelled to move this traffic intrastate through nearby junction points instead of over its established interstate routes through Dothan, Ala. During December 1948 and January 1949, the difference in the Coast Line's revenue on such traffic to Panama City was $6,746. In this particular instance, the established interstate route appears to be somewhat longer than the intrastate routes which were actually used.

Additional losses of revenue occurred to this respondent on traffic to and from other points also by reason of diversion of interstate traffic to cheaper intrastate routes, or because it was forced to meet, over its normal interstate route, the lower rates maintained over competing intrastate [fol. 157] routes. The losses thus sustained are not included in the estimate of $915,325 above mentioned.

Motion for dismissal.—At the close of the hearing, the Florida Railroad and Public Utilities Commission pre-

sented a motion for dismissal or denial of respondents' petition on which this proceeding was instituted, on the grounds, among other things, (1) that the record does not show the value of railroad property devoted to Florida intrastate business nor the revenue required to yield a fair return on such property; (2) that respondents' financial distress is due to deficits in passenger operations, and (3) that the record in various respects fails to meet the burden of proof imposed upon respondents to support the findings sought herein. Various shippers and their organizations joined in this motion. In our opinion, the findings hereinafter made are amply supported by the record herein.

Rate of return.—The Florida commission has interpreted certain State statutes as requiring the carriers to furnish detailed evidence to show among other things, the costs of operation in Florida, the rate of return, and the value of their properties devoted to intrastate transportation in that State. Respondents found it impractical to produce the data comprehended in such an interpretation of the statutes. We are unable to agree that the respondents have not made a bona fide effort to justify the proposed increased rates and charges before the Florida commission. For the purpose of the instant proceeding it is not essential that the Florida commission make an affirmative finding, *Florida* v. *United States*, 282 U. S. 194, 210. Our function in administering section 13(4) of the act is not that of an appellate tribunal. *Increases in Kansas Freight Rates and Charges*, 231 I. C. C. 137, 138. The proportionate percent- [fol. 158] ages of each individual class of traffic moving intrastate and interstate is not shown. Nevertheless, where, as is the case here, the intrastate and the interstate traffic, as a whole, moves under substantially similar conditions, and the expense of handling the two classes of traffic are inextricably woven together, an attempt to do the impossible, namely an attempt to show costs of intrastate service segregated from interstate costs, together with similarly segregated valuation of carrier property, would serve no useful purpose.

In 1948, the East Coast which operates entirely in Florida had a return of 2.45 percent based upon an investment of $87,272,435. Its passenger deficit was $2,830,082.

Our power to require an increase in intrastate rates depends upon whether intrastate traffic is contributing its fair share of the earnings required to meet maintenance and operating costs and to yield a fair return on the value of the property devoted to the transportation service, both interstate and intrastate. Respondents are not seeking an increase in the intrastate revenue sufficient to give them a fair return on the value of their property devoted to freight service but merely to secure a contribution to maintenance and operating costs, including taxes, more nearly proportionate to the contribution thereto made prior to the increases in Ex Parte 162 and Ex Parte 166. We may properly use such prior contribution as a valid criterion of fairness, in the light of which the Florida intrastate rates and charges in 1947 and 1948 afforded a disproportionately small share of the revenue required to meet the costs of the service in Florida. This condition has been aggravated by the continuing rise in operating expenses following Ex Parte 162 and Ex Parte 166, which impelled us to authorize additional increases in freight rates and charges in Ex Parte 168.

[fol. 159] *Passenger deficits.*—In the last report in Ex Parte 168, wherein we discussed the subject of passenger deficits at length (276 I. C. C. 32 et seq.) we said that we felt compelled in a general rate case to take such deficits into account in the adjustment of freight rates and charges. Both the freight and passenger services are essential. The action in Ex Parte 168 was taken without prejudice to subsequent examination of the question upon complaint or in an investigation of our own. Of course, the passenger business may not be excused from contributing the greatest possible earnings consonant with adequate service and reasonable charges. *The carriers must exert every legitimate effort to* [illegible] this branch of their operations on a more compensatory basis. *Increased Freight Rates 1948, supra; Revenues in Western District*, 113 I. C. C. 3, 22, 23; *Property Owners' Committee* v. *Chesapeake & O. Ry. Co.*, 237 I. C. C. 549, 565.

The Florida commission states that it has never denied a requested increase in passenger or Pullman fares, or express rates, and that it has recently authorized the Coast

Line to withdraw two passenger trains and reroute two others at estimated annual savings of $365,000. In its opinion, there is little or no intrastate milk, mail, and express service in Florida. Various steps have been initiated by the carriers and considered by us in an effort to place interstate passenger operations on a more compensatory basis. Increased passenger deficits, by reason of the continuing rise in operating expenses and the growing use of other forms of transportation, is a condition bearing alike upon intrastate and interstate rates. *There is here no claim or showing that the passenger deficits of the respondents do not result from intrastate as well as interstate operations,* and the passenger deficit of the East Coast, which operates entirely within Florida, would appear to indicate to the contrary.

The record affords no justification for a difference in treatment in this respect between Florida intrastate traffic, on the one hand, and interstate traffic to and from Florida, [fol. 160] on the other hand. The question of passenger deficits is a serious one for both carriers and shippers, and would become even more serious for interstate shippers if this burden were imposed entirely upon them.

I. & S. Docket No. 5646

By schedules filed to become effective April 13, 1949, respondents, the Coast Line and the East Coast, proposed to establish interstate distance transit rates on sugar cane, in carloads, from loading stations on their lines in Florida to Clewiston, Fla., under extensive transit provisions, including the condition that the outbound movement of the products, namely raw sugar, blackstrap molasses, and ground dehydrated sugar cane pith, be made over respondents' lines in designated proportions. As previously stated, most of this outbound movement goes to interstate destinations. The proposed minimum is 40,000 pounds from October 1, when the shipping season begins, to January 31, and 44,000 pounds thereafter to September 30. Upon protest of the United States Sugar Corporation, which operates a mill at Clewiston, operation of the schedules was suspended to and including November 12, 1949. Respondents have

voluntarily deferred the effective date of the suspended schedules pending disposition of this proceeding.

The movement is in cars owned by the sugar company at a rental charge paid by respondents of 2 cents per mile while loaded. The hauls range from 2 to 12 miles over the Coast Line direct and from 9 to 29 miles over both lines from points served by the East Coast. In the 1948-9 season, 42,930 carloads of cane, weighing nearly a million tons, were handled in 1,280 trains, averaging 33.5 loaded cars a train. A heavy volume of traffic moved from Canal Point, Fla., to Clewiston, 29 miles. All of the traffic was delivered on the interchange tracks, owned and maintained by the sugar company whose engines thereafter performed all necessary switching. The sugar company weighed the cars and owns the storage tracks at destination on which empty cars are assembled for the reverse movements to points of origin. [fol. 161] At present, Florida intrastate transit distance rates are applied on this traffic. The same rates plus the increases under Ex Parte 162 and Ex Parte 166 are now proposed for interstate application, subject to the increases in Ex Parte 168. Originally, the sugar company operated under trackage rights over tracks of the railroads. The rates were made 60 percent of certain Cuban transportation rates plus certain Cuban accessorial charges, subject to Cuban minima of 30 tons per car and 30 cars per train. Subsequently, upon insistence of the sugar company, the accessorial charges were canceled. Moreover, the minima were reduced to 15 carloads per train and to 20 and 22 tons per car for the first and last parts of the shipping season, respectively. It was agreed that outbound movements of sugar should go to respondents in certain proportions. In 1936 the rate from Canal Point, the most important shipping point, was reduced from 34 to 28 cents per net ton. Following differences with organized labor in 1941, respondents took over the transportation service. In 1942, they established the intrastate rates agreed upon, which rates are those still in effect.

These Florida rates were and are substantially lower than intrastate rates in Louisiana prescribed by the Louisiana commission, minimum 30,000 pounds, and even substantially lower than voluntarily established Louisiana

short-haul rates, minimum 50,000 pounds. Originally, the Florida rates for single-line and joint-line application ranged from 3 to 33 cents per net ton lower than the compared single-line rates in Louisiana. The present net transit rates, for example, from Coast Line points to Clewiston range from 30 to 40 cents per net ton, and the proposed rates range from 44 to 58 cents per net ton, as compared with 86 cents if the Louisiana basis were applied instead.[5] Moreover, the Florida cane is more valuable than [fol. 162] the Louisiana cane, and there is a substantial movement of Louisiana cane which is handled in large cuts of cars. The volume of movement in Louisiana, however, is not shown to be as heavy as that in Florida.

The charges per minimum carload of 40,000 pounds, range from $6 to $11 at the Florida intrastate transit rates and from $8.80 to $15.80 per car at the interstate transit rates proposed herein. The maximum haul under these charges is 29 miles from Canal Point, which is a two-line haul. Canal Point, as stated, is the most important shipping point. Published transit charges on other traffic, intended merely to cover the expense of keeping records and other services incidental to transit services in the South, including Florida, range from $10 to $57.50 per minimum carload. The proposed single line interstate rates, ranging from 44 to 58 cents a net ton, are compared with certain high, but unused, local distance rates, for similar distances, ranging from 71 to 142 cents.[6] The proposed two-line interstate rate of 79 cents from Canal Point is compared with the corresponding unused local intrastate distance rate of $2.77.

The operating and transportation conditions in the handling of Florida cane are described in detail in the record. For example, the East Coast train crews, which consist of 5 men each, are on duty between Lake Harbor, Fla., and Canal Point an average of 4.5 to 5 hours daily, but under existing working agreements must be paid for 8 hours time plus an additional allowance of 1 hour at Lake

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[5] See footnote 2.

[6] On March 6, 1950, a complaint was filed with the Florida Commission requesting it to prescribe local rates to be subject to no reshipping requirements.

Harbor. The movement of trains of other freight between Canal Point and Clewiston are frequently delayed be- [fol. 163] cause the cane trains are given preference. In the perishable season, however, vegetable trains also are expedited and some of them move late in the evening when the cane trains are not in operation.

Protestants estimate respondents' total operating expenses to be $270,145 as compared with revenue of $400,774 in the 1948-1949 season, making the estimated operating ratio 67.4. This ratio would be reduced considerably if payroll taxes were excluded, and revenues were estimated on basis of minima of 40,000 and 44,000 pounds with the general increases added to the rates but still with 1948-9 season expenses. Instead of using annual reports of the railroads to this Commission and the Florida authorities in arriving at these figures, *protestant first estimated the cost for operating 33.41 miles of track owned by it; obtained the average of this cost per mile; multiplied that average by 41 miles of track used by the East Coast and the Coast Line, without distinction as between these two respondents, thus obtaining the estimated cost for maintenance of way and structures for both railroads for handling cane, with no deduction for the handling of other commodities, such as fruits and vegetables, on the same tracks. Protestant then separated the cost of maintaining its 7 locomotives, used to switch the cane traffic, between labor and materials; used a portion of transportation expenses, and locomotive supplies and expenses, in proportion to (1) general overhead expenses and (2) general overhead expenses for maintenance of equipment accounts; separated those expenses between the portion applicable to locomotives and the portion applicable to the maintenance of cars; used the labor for firing locomotives, and so forth and the labor portion of all accounts, increased 12 percent, as with maintenance of way and structure, to cover payroll expenses, injuries and vacations; thus arrived at total cost of maintenance of locomotives of $42,954.96; allowed 90 percent for* the cane [fol. 164] traffic and 10 percent for other traffic; obtained the average cost per locomotive; and multiplied that average *by 3, producing an estimated cost of $16,568.34.*

However, the *Coast Line assigns 4 steam engines and the East Coast uses 2 diesel locomotives in this service.*

In using various estimates to compute respondents' expense for transportation, nothing was included for the cost of dispatching trains, overhead, yard service, train and engine supplies, enginehouse expenses, crossing protection, loss and damage to shipments, or injuries to persons, other than expenses referred to above. The important items of return on investment, and taxes on property used in the transportation service, were omitted. Moreover, the basing of rates solely on the fully distributed costs would ignore value-of-service and other considerations.

When the net transit intrastate rates were originally established in 1942 the minima of 40,000 and 44,000 pounds were established. On account of labor conditions during the war, a minimum of 38,000 pounds was established in 1944. Subsequently, the minima became 36,000 and 38,000 pounds in 1946, which were continued until the 1948-49 season when the railroads reestablished the original minima of 40,0000 and 44,000 pounds. Respondents' tests showed that each car used in this service made two trips, and some made from 3 to 16 trips, loaded to or in excess of the latter minima. During the first period when the minimum was *40,000 pounds*, the average loading was *41,399 pounds*. During the second period when the minimum was *44,000 pounds*, the average was *43,817 pounds*. The cars are uniform in size and were loaded above the tops of the racks. Based on 18,900 carloads and minimum penalty charges thereon of $14,740.26, the average penalty per car would be [fol. 165] 78 cents. Based on total carloads with and without penalty charges, the average was 34 cents. This average penalty would be increased if based on the increases sought. Where, as here, there is a wide variation in actual loading, the minimum weight should be somewhat less than the average loading.

Present and proposed transit rules require (1) routing of outbound products in proportion to inbound cane received from these two respondents; (2) laboratory tests to determine the amount of products from each ton; and (3) the furnishing of reports every three weeks. The tariffs

further provide (1) for local usage or sale of 500,000 gallons of blackstrap a season; and (2) for application of the high nontransit rates on cane if proportionate amounts of products are not shipped within a period of 18 months. In addition to present intrastate requirements, the suspended interstate tariff further provides (1) that bond shall be furnished, and (2) that freight charges shall be paid each 96-hours. In this connection, see *Regulations for Payment of Rates and Charges*, 273 I. C. C. 681, and prior reports mentioned therein.

Findings and Conclusions

Upon the record before us, we find and conclude:

1. That the interstate transit rates, charges, minimum weights, and rules proposed in I. & S. No. 5646 are just and reasonable, except the proposed minimum of 44,000 pounds from February 1 to September 30. We find that a just and reasonable minimum for that period should not exceed 42,000 pounds.

In No. 30140, we further find—

2. That the transportation conditions incident to the [fol. 166] intrastate transportation of freight in Florida are not more favorable and such conditions in the Florida peninsula are somewhat less favorable than those (1) within southern territory and (2) between Florida and interstate points.

3. That the present interstate freight rates and charges within Florida and between points in Florida and points in other States are just and reasonable, including those proposed within Florida in I. & S. No. 5646, to the extent above found just and reasonable; and that intrastate rates, charges, and minimum weights herein approved will not exceed a just and reasonable level.

4. That there is *active competition between localities engaged in interstate commerce between points in Florida and points in other southern States, on the one hand, and localities engaged in intrastate commerce in Florida*, on the other hand, and that this competition extends for all practical purposes throughout the entire State of Florida.

and to class and commodity traffic generally, but not including sugar cane to the mill, molasses, and, for short hauls, mixed fertilizer and a few other commodities.

5. That the Florida intrastate rates, charges, and minimum weights, which are below the level herein authorized, are abnormally low and are *not contributing their fair share to the revenues required by respondents to enable them to render adequate and efficient service and to operate profitably* and thereby accomplish the purpose of the Interstate Commerce Act, and as set forth in the national transportation policy declared by the Congress, to develop and preserve a national transportation system adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense; and that the burden thus cast upon interstate commerce is undue to the [fol. 167] extent that these intrastate rates and charges are less than they would be on the basis herein approved.

6. That the establishment of intrastate rates and charges increased sufficiently to equal the level herein approved will substantially increase respondents' revenues therefrom, and will constitute not more than a fair proportion of respondents' total income, not taking into consideration the Ex Parte 168 increases.

7. That the maintenance of intrastate rates and charges within Florida on bases lower than those herein approved causes, and in the future will cause, (1) in all instances, unjust discrimination against interstate commerce, (2), in nearly all instances, undue preference of and advantage to localities in intrastate commerce, and undue prejudice to localities in interstate commerce; and (3) undue and unreasonable advantage and preference to intrastate shippers of cement, particularly those at Tampa, Fla., and undue prejudice to interstate shippers, especially those at Clinchfield, Ga.

8. *That this unjust discrimination and undue prejudice* should be removed by establishing intrastate rates and charges between points in Florida *which will reflect the same increases as are, and for the future may be, maintained by respondents on like interstate traffic to and from Florida* and within Florida under our authorizations in Ex Parte No. 162 and Ex Parte No. 166, modified as herein

indicated and as proposed before the Florida commission in proceedings referred to herein: *provided*, that, under these findings, (1) on sugar cane, the present Florida intrastate transit rates should be increased to reflect the Ex Parte 162 and Ex Parte 166 increases but the minimum weights thereon should be the same as the minima author-
[fol. 168] ized in I. & S. No. 5646, and the present high unused Florida intrastate non-transit rates should not be increased, except as necessary to observe as a minimum the Florida intrastate transit rates increased as herein authorized; (2) that on wastewood, the increased intrastate rates, minimum 40,000 pounds, authorized herein, shall alternate with intrastate rates, minimum 60,000 pounds, which latter rates shall not exceed the interstate rates, minimum 60,000 pounds, applicable, from August 21, 1948, to, but not including, January 11, 1949, the effective date of the initial interim increases authorized in Ex Parte No. 168, for corresponding distances from Coast Line stations in Florida to Brunswick, Ga.; (3) that on pulpwood, no increase shall be made in Florida joint-line charges nor in Florida single-line distance rates which would cause those rates or charges to exceed the level of the corresponding rates contemporaneously maintained on interstate traffic during the foregoing period from or to Florida points under the Roanoke Rapids scale; (4) that on fertilizers and fertilizer materials, no increase shall be made in Florida single-line intrastate rates which will cause such rates to exceed the level of the single-line intrastate rates maintained by the Florida East Coast Railway immediately prior to January 11, 1949, the effective date of the initial interim increases authorized in Ex Parte No. 168; (5) that no intrastate rate or charge shall be increased so that it will exceed the lowest level of the corresponding rates or charges contemporaneously maintained generally on interstate traffic to and from Florida points in the period from August 21, 1948, to, but not including, January 11, 1949; and (6) that the foregoing provisions shall be construed so as to make due allowance for differences in minimum weights and for the Florida peninsular arbitraries where applicable.

[fol. 169] These findings are without prejudice to the right of the authorities of the State of Florida, or any other

interested party, to apply for a modification thereof as to any specific intrastate rates or charges on the ground that they are not related to the interstate rates or charges on like traffic in such a way as to contravene the provisions of the Interstate Commerce Act.

Protestants' motion to deny respondents' petition and to dismiss this proceeding is overruled.

In No. 30140, an order carrying into effect the foregoing findings will be entered, *unless we are notified by the Florida commission, within 30 days from the date of service of this report, that it will permit promptly the increases herein approved. In I. & S. No. 5646, an order will be entered requiring cancel-ation of the suspended schedules, without prejudice to the establishment of rates, minima, and rules in conformity with the foregoing findings.*

[fols. 170-171] ORDER

At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 4th Day of May, A. D. 1950

Investigation and Suspension Docket No. 5646

Sugar Cane, Florida to Clewiston, Fla.

It appearing, That by order dated April 12, 1949, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order, and suspended the operation of said schedules to and including November 12, 1949; and that respondents have voluntarily deferred the effective date of the suspended schedules pending disposition of this proceeding;

It further appearing, That a full investigation of the matters and things involved has been made, and that the Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel said schedules,

on or before June 15, 1950, upon notice to this Commission and to the general public by not less than one day's filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and that this proceeding be discontinued, without prejudice to the establishment of new schedules in conformity with the conclusions in the report herein.

By the Commission.

W. P. Bartel, Secretary.

[fol. 172] BEFORE THE INTERSTATE COMMERCE COMMISSION

PETITION FOR REHEARING BY FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION—June 19, 1950

Comes now the Florida Railroad and Public Utilities Commission and respectfully petitions the Interstate Commerce Commission to reconsider its decision in this proceeding wherein the Report of the Commission bearing date as "decided May 4, 1950" was filed and copies thereof mailed to parties from Washington, D. C., on or about May 15, 1950 (copy thereof being received by the Florida Commission and its Staff on May 17, 1950), and, upon such reconsideration, to dismiss the Carriers' Petition herein and discontinue this proceeding on the following grounds to-wit:

1. The Commission's Report is contrary to the evidence of record in this proceeding.

2. The Commission's Report is contrary to the applicable [fol. 173] provisions of law.

3. The Commission's Report ignores the fact that the Respondent Railroads are earning a fair and reasonable return from their Florida intrastate freight operations and that any further increases in Florida intrastate freight rates will be unreasonable, unwarranted and contrary to law.

4. The Commission's Report, if made effective by appropriate order, will unlawfully impose upon Florida intrastate shippers of goods deficits incurred by the railroads in the operation of their passenger service.

5. The Commission's Report, if made effective by appropriate order, will result in an unwarranted and arbitrary

imposition of excessive charges upon the intrastate shippers of goods in Florida in order to supply an adequate return for the carriers' entire service.

6. The Commission's Report fails to find what contribution from Florida intrastate traffic would constitute a fair proportion of Respondent Railroads' total income.

7. The Commission's Report fails to find what amount of revenue is required to enable Respondent Carriers to operate efficiently.

8. The Commission's Report fails to find that the present Florida intrastate freight rates are less than compensatory or that they are insufficient to cover the full cost of service.

9. The Commission's Report fails to find that the maintenance of the proposed increased intrastate freight rates in Florida is necessary to the operation of a nationally efficient [fol. 174] and adequate transportation system.

10. On the basis of the record herein the Commission is without authority to supplant state-prescribed intrastate freight rates in Florida.

11. The entry of an order carrying into effect the findings contained in the Commission's Report aforesaid is unwarranted by the record in this proceeding and will be contrary to law and constitute an illegal invasion of the rights of the State of Florida and its citizens.

Wherefore, the Florida Railroad and Public Utilities Commission respectfully petitions the Commission for a rehearing in this proceeding for the purpose of reconsidering its Report aforesaid, and upon such reconsideration it is respectfully urged that the Commission give full consideration to the various grounds herginbefore set out and that a final order be entered herein dismissing the Carriers' Petition and discontinuing this proceeding.

Respectfully submitted, Florida Railroad and Public Utilities Commission, by Wilbur C. King, Chairman; Jerry W. Carter, Commissioner; Richard A. Mack, Commissioner; Fred Pettijohn, Director Commerce Department.

Lewis W. Petteway, General Counsel, Florida Commission, 700 S. Adams Street, Tallahassee, Florida.

[fols. 175-176] Certificate of Service (omitted in printing)

[fol. 177] BEFORE THE INTERSTATE COMMERCE COMMISSION

REPLY OF RESPONDENT RAILROADS TO PETITIONS FOR RECONSIDERATION OR REHEARING AND MOTION ON BEHALF OF RESPONDENTS FOR THE ENTRY OF AN ORDER—June 27, 1950

The respondent railroads have received copies of numerous petitions filed on behalf of various parties, including petitions of the Florida Railroad and Public Utilities Commission, Florida Rate Conference, Container Corporation of America, et al., Florida Lumber and Mill Work Asso., et al., Newport Industries, Inc., Florida Citrus Com-
[fol. 178] mission, et al., and United States Sugar Corporation.

The Florida Railroad and Public Utilities Commission seeks a reopening and rehearing of No. 30140 in its entirety. In a brief petition it merely enumerates matters heretofore advanced and relied upon without further elaboration or discussion.

The petition of United States Sugar Corporation, although relating entirely to the rates on sugar cane moving to Clewiston, Fla., contains a prayer that the Commission reopen and rehear both I. & S. 5646 and No. 30140 and that the Commission withhold the entry of an order in No. 30140 pending such further hearing.

The remaining petitions relate to certain individual commodities, reconsideration of No. 30140 being sought in so far as it relates to such commodities.

The petitions above referred to are filed by the same interests that have heretofore been fully heard on brief, exceptions and oral argument. They represent in the main a mere reiteration of contentions previously advanced, together with a claim that the Commission failed to agree with such contentions. Since respondents have heretofore filed a reply to protestants' exceptions (dated March 30, 1950 which dealt in detail with the exceptions of the individual protestants to the examiner's proposed report, respondent believe it to be unnecessary to cover over and
[fol. 179] over again the same ground in the way of further reply to these petitioners. Petitioners' efforts to delay the final disposition of these proceedings are being made in entire disregard of the long period of time in which the

proceedings have been pending and the fact that the respondent railroads are meanwhile continuing to be deprived of large amounts of revenue to which the Commission has found that they are reasonably entitled and of which they are urgently in need.

Rule 101(b) of the General Rules of Practice provides as follows with respect to petitions for rehearing or further hearing:

> "When in a petition filed under this rule opportunity is sought to introduce evidence, the evidence to be adduced must be stated briefly, such evidence must not appear to be cumulative, and explanation must be given why such evidence was not previously adduced."

In its petition for rehearing United States Sugar Corporation alleges (p. 6) that in reaching its conclusions in I.&S. 5646 the Commission "made serious errors in its findings of fact and took into consideration a number of points, or factors, resulting from incompetent, irrelevant and erroneous testimony presented by the railroads." It is further asserted that petitioner desires to offer so-called new and additional evidence respecting the rates, minimum weights and physical handling of petitioner's sugar cane, together with a new "cost study" which it would now [fol. 180] substitute for the study which was originally offered and was fully considered by the Commission. In other words this petitioner, being dissatisfied with its original presentation, would have the Commission afford it an opportunity to start over again in an effort to improve this presentation although it had ample time and opportunity to prepare and present its case in the beginning. Petitioner even goes so far as to assert (p. 18) that alleged errors in the Commission's findings are "due in part to errors in the briefs of the railroads" and due in part to the fact that petitioner's cost accountant's testimony "may not have been clearly understood"—which would appear to be strange grounds indeed upon which to seek a rehearing of a case before the Commission.

The petition of this protestant, like its brief and exceptions heretofore filed in this proceeding, is filled with exaggerated and unwarranted assertions of so-called "facts"

many of which are flatly contradicted by the evidence already of record.

For example, it is said in the petition for rehearing (p. 13) that there is "no origin-terminal switching" by the railroad in connection with the movement of cane delivered to the F.E.C. Ry. at Canal Point. Witness Hamilton, trainmaster of the F.E.C., testified that in the interchange operations at Canal Point, including the delivery of empty cane cars and the outbound movement of loaded cars, a very substantial amount of switching by the railroad is [fol. 181] required (R. 824—Respondents' brief, p. 34).

It is said in the petition (p. 8) that "there are no facts of record" which support a finding that the present rates on sugar cane are unduly low or that the maintenance of such rates causes a burden upon interstate commerce. One significant fact of record, however, is that on a minimum car of 40,000 pounds the revenue is as low in some instances as *$6 per car* and that the highest per car charge, covering a joint haul of 29 miles with an empty movement in the reverse direction, is *only $11 per car*, which is certainly very low revenue for any sort of railroad transportation. Petitioner, nevertheless, unhesitatingly asserts that the present rates are yielding "handsome profits" (p. 9).

Reference is made in the petition (p. 4) to alleged excessive penalty charges for failure to load to carload minimum requirements. The record shows, and the Commission mentions in its report, that on the cars as to which there were such penalty charges during the 1948-49 season the average charge per car was *only 78 cents* and that if the entire season's movement be included such average charge on this account was *only 34 cents* per car (Ex. 29, p. 42).

Although strenuously insisting that any reference to the rates applicable on Cuban sugar cane is wholly irrelevant petitioner, as a part of the "new evidence" which it desires [fol. 182] to present, says that it is now prepared to submit the results of an investigation which it has made with respect to the Cuban movement and rates (p. 14). The fact is that the Commission merely referred to the Cuban cane movement in the course of its historical review in the report (sheet 41) of the changes that have been made from time to time in the rates on sugar cane to Clewiston.

As constituting additional so-called "new evidence", petitioner (p. 15) makes various assertions as to what it would expect to prove with reference to the Louisiana cane movement and rates, claiming that the railroad witness who testified upon that subject was "not qualified." The record shows, however, that this witness, only a short time before the hearing, had personally visited the Louisiana cane fields for the immediate purpose of familiarizing himself with this subject. He described at length the points of dissimilarity as well as similarity between the Florida and Louisiana cane movements, respectively. His sworn testimony should be sufficient to establish the facts with sufficient certainty, at least with as much certainty as might be obtained through the testimony of some representative of the sugar company who may have made an investigation of the Louisiana cane movement. Petitioner had every reason to anticipate that the Louisiana cane rates would be used for the purpose of comparison with the Florida cane rates and every opportunity to prepare and present such evidence upon this subject as it might desire to offer.

[fol. 183] So far as concerns petitioner's "new" cost study (petition, pp. 18, *et seq.*) We have pointed out above that petitioner's original cost calculations (which were themselves amended and revised by petitioner after the hearing) were accorded full consideration by the Commission although, as the report states (sheet 44), fully distributed costs, even if reliably computed, do not constitute the sole measure of reasonable rates.

Petitioner (p. 29) states that it desires to present "new evidence as to the loading of cane" for the purpose of showing that the carriers' representatives "simply do not understand" this matter of car loadings. The carriers' evidence upon this subject, however, was based upon an actual check of the waybills covering the entire cane movement during the 1948-49 shipping season and including every shipment. If, as petitioner states (p. 29), there were "about 5,600 penalty cars" during the latest, or 1949-50, season it will be observed that the number of such penalty cars was *far smaller* in this last season than it was in 1948-49.

Finally this petitioner, although again insisting that it is

not seeking a transit tariff and does not expect to use such tariff, finds fault with the transit provisions as relating particularly to molasses, it being asserted that petitioner is unable to supply customers who wish to purchase the molasses locally at Clewiston (Petition, p. 31). When it is kept [fol. 184] in mind that the tariffs provide "for local usage or sale of 500,000 gallons of blackstrap a season" (Report, sheet 45), to which amount is to be added the substantial amount of molasses produced from "town-site" cane, i.e., cane grown in the immediate vicinity of Clewiston and not moved by rail at all, it would seem that the supply available for local sale should certainly be entirely adequate.

Respondents submit that the various petitions hereinabove referred to are without merit and that they should be denied by the Commission.

Motion for Entry of Order in No. 30140

The report herein of May 4, 1950 contains the following (sheet 49):

> "In No. 30140, an order carrying into effect the foregoing findings will be entered, unless we are notified by the Florida commission, within 30 days from the date of service of this report, that it will permit promptly the increases herein approved."

This report was released and served on May 15, 1950, since which date a period of more than 30 days has now elapsed. So far as respondents are advised, the Florida Railroad and Public Utilities Commission has not notified this Commission that it will permit promptly the increases approved in said report nor has it requested an extension of time in which to indicate its intentions in that respect. Respondents accordingly move that this Commission proceed forthwith to enter an appropriate order in No. 30140.

[fol. 185] Respectfully submitted, James A. Bistline, W. A. Northcutt, Charles Clark, Chas. P. Reynolds, Frank W. Gwathmey, Attorneys for Respondents.

June 27, 1950.

Certificate of Service (omitted in printing).

[fol. 186] BEFORE THE INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 5646

Sugar Cane, Florida to Clewiston, Fla.

ORDER DENYING PETITIONS—July 25, 1950

Upon further consideration of the records in the above-entitled proceedings and upon consideration of petitions of protestants including the Florida Railroad and Public Utilities Commission, Florida Rate Conference, Container Corporation of America et al., Florida Lumber and Mill Work Association et. al., Newport Industries, Inc., Florida Citrus Commission et al., and United States Sugar Corporation for reconsideration and rehearing; and it appearing that the reasons set forth in said petitions do not furnish sufficient justification for reopening the proceedings for reconsideration or rehearing;

It is ordered, That said petitions be, and they are hereby, denied.

By the Commission.

W. P. Bartel, Secretary.

[fol. 187] BEFORE THE INTERSTATE COMMERCE COMMISSION

FINAL ORDER—July 25, 1950

This proceeding having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and the Commission, on May 4, 1950, having made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof; and

It appearing, That as set forth in said report and in accordance with the practice in such proceedings, the Commission stated that an order carrying into effect the findings in said report would be entered, unless we were notified by the Florida Commission, within 30 days from May 15, 1950, the date of service of said report, that it would permit promptly the increases therein approved, and that no such

notification has been made by the Florida Railroad and Public Utilities Commission:

It is ordered, That respondents in this proceeding, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before September 28, 1950, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to abstain, from practicing (1) the unjust discrimination against interstate commerce, and (2) the undue preference of and advantage to certain persons and localities in intrastate commerce and, undue prejudice and disadvantage to certain persons and localities in interstate commerce, found in said report to exist.

It is further ordered, That said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before September 28, 1950, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply for the [fols. 188-189] intrastate transportation of freight from and to points in the State of Florida freight rates and charges which shall be no lower than the approved rates and charges, or on the approved rate bases, as provided in said report.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission.

W. P. Bartel, Secretary.

[fol. 190] Before the Interstate Commerce Commission

Petition of Respondents for Modification of Order Herein—September 7, 1950

Comes now the carriers operating within the State of Florida, respondents in the above entitled proceeding, and by C. A. Spaninger, Publishing Agent of the Southern Freight Tariff Bureau, their Agent, respectfully petition the Interstate Commerce Commission to modify and amend the order entered herein July 25, 1950, so as to permit the—

establishment, effective September 28, 1950, upon notice to the Commission and to the general public by not less than five days' filing and posting in the manner prescribed in Section 6 of the Interstate Commerce Act, of rates for the intrastate transportation of milk and cream and articles listed in the rate tariffs, as and when taking milk or cream rates, when handled in passenger service, increased as provided in the Commission's report and order and for cause shows:

Freight rates and charges have been increased in accordance with the order effective September 28, 1950, upon statutory notice, except the rates and charges on milk and cream and related articles when handled in passenger service. These latter rates and charges are published in tariffs issued by the respective passenger departments of the individual lines. Through regrettable error these milk and cream rates were completely overlooked, the passenger departments were not advised of the Commission's order and consequently have taken no action toward effecting publication in accordance therewith. This failure in pub-
[fols. 191-192] lication has just come to light, too late to effect publication effective September 28, 1950 (the final date prescribed in the order) upon statutory notice as provided in the order.

Wherefore, the premises considered, the respondents respectfully urge the Commission to modify and amend the order in Docket 30140 to permit publication of rates and charges on milk and cream and articles listed in the rate tariffs, as and when taking milk or cream rates, when handled in passenger service, in accordance with said order, effective September 28, 1950, upon five days' notice, and in view of the shortness of time remaining within which to effect publication, the undersigned, Agent for said respondents, further requests that he be telegraphed collect, as soon as conclusions have been reached.

All of which is

Respectfully submitted, ——— ———, Publishing Agent, Southern Freight Tariff Bureau, Agent for Respondents.

101 Marietta St. Bldg., Atlanta 3, Georgia.

September 7, 1950.

[fol. 193] Before the Interstate Commerce Commission

Order of Modification—September 18, 1950

Upon further consideration of the record in the above-entitled proceedings, and upon consideration of petition of respondents for modification of the order; and for good cause appearing:

It is ordered, That the order entered in said proceedings on July 25, 1950, which by its terms is made effective September 28, 1950, upon not less than 30 days' notice, be, and it is hereby, modified to become effective upon five days' notice, instead of 30 days' notice, in so far as said order requires the publication of rates and charges on milk and cream and articles listed in the rate tariffs, as and when taking milk or cream rates, when handled in passenger service.

By the Commission.

W. P. Bartel, Secretary. (Seal.)

[fol. 194] In United States District Court

Case No. 292-T-Civil

Wilbur C. King, Jerry W. Carter, and Richard A. Mack, as and constituting the Florida Railroad and Public Utilities Commission, Plaintiffs,

vs.

The United States of America, Defendant,

and

Interstate Commerce Commission, Intervening Defendant

Before: McCord, Circuit Judge, DeVane and Whitehurst, District Judges

Opinion—Filed July 17, 1951

DeVane, District Judge:

This an action brought by the Florida Railroad and Public Utilities Commission, and the members thereof, against

The United States of America, under Title 28 USC, Sec. 1336 and others, seeking to permanently enjoin, set aside and annul an order of the Interstate Commerce Commission affecting intrastate rates and charges in the State of Florida. Two short-line railroads, the Florida Citrus Commission, Growers and Shippers League of Florida and numerous shippers intervened as parties plaintiff. The Interstate Commerce Commission and all Class I railroads operating in Florida, intervened as parties defendant.

The case arises out of a report and order of the Interstate Commerce Commission (Docket #30140; 278 I. C. C., 41) entered in a case entitled "Increase in Florida Intrastate Rates." The suit is brought to enjoin and set aside the order of the Interstate Commerce Commission dated July 25, 1950, of which the report is made a part.

The order, complained of, directed the raising of rates and charges for the intrastate transportation of freight over the lines on all railroads operating in the State of Florida to correspond with increases that had theretofore been made in interstate freight rates and charges. It was made pursuant to authority vested in Interstate Commerce Commission under provisions of Section 13(3), (4) and Section 15(1) of the Interstate Commerce Act, (Title 49 USC, 13(3), (4); and 15(1). The circumstances leading to the investigation [fol. 195] by the Interstate Commerce Commission in Docket #30140 are briefly summarized below.

In a proceeding known as Ex Parte 162, *Increased Railway Rates, Fares and Charges, 1946*, 266, ICC, 537, the Interstate Commerce Commission, in response to a petition filed by all Class 1 railroads of the United States, conducted an investigation of interstate railroad freight rates and charges. Upon the showing made by the petitioning railroads of rapidly mounting operating costs and declining passenger revenue the Interstate Commerce Commission authorized a general increase of 20% in basic interstate freight rates and charge throughout the United States, with certain variations applicable to individual commodities.

Subsequently, in Ex Parte 166, *Increased Freight Rates, 1947*, 269 ICC, 33; 270 ICC, 81; 279 ICC, 93 and 270 ICC, 403, the Interstate Commerce Commission conducted a further general investigation of interstate freight rates and charges. Upon the showing made by the petitioning car-

riers of the continued increases in operating costs and declining passenger revenue, the Interstate Commerce Commission, finding the existence of an emergency, at first authorized an immediate interim increase of 10% in the intrastate freight rates and charges, with certain exceptions, which were to continue pending the completion of the investigation. (269 ICC, 33).

In the second report in this proceeding the 10% interim increase previously authorized was raised to an interim increase of 20% (270 ICC, 81). In the third report, (270 ICC, 93), the interim increases theretofore allowed were superseded by general percentage increases, varying in amounts in the different territorial divisions of the country, the increases authorized within the territory in which Florida is located being 25%, with certain variations as to particular commodities.

In the fourth and final report in this case the general increase of 25% was continued and made permanent, with various modifications and variations on individual commodities (270 ICC, 403).

The parties are not in entire agreement as to the average percentage increases allowed by the Interstate Commerce Commission in its several decisions, but the question is not of importance in the decision of this case and the percentages used above are for illustrative purposes only and fairly well represent the increases authorized.

[Vol. 196] Following the action of the Interstate Commerce Commission in Ex Parte 162 and 166, the railroads operating in Florida, (as did the railroads operating in every other State in the United States), made application to the Florida Railroad and Public Utilities Commission to authorize like increases in intrastate rates in the State of Florida. In Florida Commission Docket #1538, considering the increases granted by the Interstate Commerce Commission in its Docket #162, the Florida Commission granted the full increases requested, except that no increases were allowed on 1) logs moving to the mills, 2) wet phosphate moving from the washer to the drying plant, 3) waste wood moving to retort or recovery plant, and 4) sugar cane moving to the mills. Also increases on pulpwood were limited to 9%.

In Docket #1466, by a series of orders, the Florida Com-

mission dealt with applications of the rail lines for general increases similar to those embraced in the Interstate Commerce Commission Ex Parte #166 proceeding.

In Order #1466(A), the Florida Commission granted the full 20% increases in effect at that time (April 9, 1948) under orders of the Interstate Commerce Commission in its Docket Ex Parte #166, with the following exceptions:

1. No increases were allowed on protective services.
2. No increases were allowed on waste wood to Pensacola, Fla.
3. No increases were allowed on sugar cane from the fields to the mill in Clewiston, Florida.
4. No increases were allowed on fertilizer and fertilizing material.
5. Increases on road aggregates were limited to 10%.
6. Increases on class rates and rates made in relation thereto were limited to 10.25%.

In the #1466(C) Order, the Florida Commission continued the 20% increases granted in its Order #1466(A) until July 1, 1949, retaining in effect the same exceptions above mentioned. By Order #1466(D) these increases and exceptions were continued in effect until after the disposition of Docket #30140 by the Interstate Commerce Commission.

Thus, the record in this case shows that in Florida, on intrastate traffic, the Florida Commission granted the rail [fol. 197] lines the same increases in freight rates as were granted by the Interstate Commerce Commission in Dockets, Ex Parte #162 and #166, with the exception of the 5% granted by the Interstate Commerce Commission in Ex Parte #166 and the commodity and class rate exceptions hereinbefore enumerated.

The case instituted by the carriers before the Interstate Commerce Commission (Docket #30140) was for the purpose of securing an order of the Interstate Commerce Commission authorizing the carriers to also put into effect the increases in rates approved by the Interstate Commerce Commission for interstate traffic, but disapproved by the Florida Commission on intrastate traffic.

Since the Interstate Commerce Commission issued its

order making the full interstate rates prescribed by it effective on intrastate traffic in Florida, certain changes have been made in rates applicable to road aggregates, waste wood, sugar cane, fertilizer and fertilizing materials, the latter applicable only on the Florida East Coast Railroad. Otherwise, rates prescribed by the Interstate Commerce Commission, for interstate traffic, have also been made effective by the Interstate Commerce Commission for the movement of intrastate traffic in Florida.

The respective parties to this suit appear to be in accord on the proposition that the Interstate Commerce Commission heard and determined Ex Parte #162 and #166 primarily as revenue cases. They also appear to be in accord that the carriers are making substantial profits out of their over-all freight services and that, considered alone, increases in freight rates would not have been justified on the ground that the carriers needed additional revenue to pay the costs of rendering freight services and a fair return on the carriers' property devoted to such services. The parties are further in accord that the carriers are sustaining heavy losses resulting from passenger operations. Moreover, the evidence before the Interstate Commerce Commission in this case clearly establishes these facts. We conclude from this evidence that the increases in rates authorized by the Interstate Commerce Commission, in Docket #30140, were authorized chiefly because of losses resulting from passenger operations. Increased labor costs accounted for some increased expenses of the carriers, but the principal losses being incurred arose out of passenger operations.

The question, therefore, before the court is—may the [fol. 198] Interstate Commerce Commission increase freight rates generally to enable the carriers to meet deficits incurred from passenger operations?

Plaintiffs contend this may not be done; that every branch of the service must contribute its proper share of the costs of operation and return on the property devoted to each class of service. They rely upon the 5% Case, 31 ICC, 351, Northern Pacific Railway v. North Dakota, 236 U. S., 585, Norfolk & Western Railway v. West Virginia, 336 U. S., 605, and other cases to the same effect.

The cases relied upon by plaintiffs to support this proposition were decided prior to 1940 when the Interstate Com-

merce Act was amended by including therein the National Transportation Policy, which the Interstate Commerce Commission was directed to follow in prescribing rates and charges on all modes of transportation subject to the provisions of the Act, 49 USC, 4281. In Railroad Commission v. Chicago, B & Q Railroad Company, 257 U. S., 563, and again in Florida v. U. S., 292 U. S. 1, the Supreme Court of the United States held that the Transportation Act, 1920, imposed an affirmative duty on the Interstate Commerce Commission "to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States." *Id.*, again in North Carolina v. United States, 325 U. S., 507, the Supreme Court re-affirmed these earlier holdings and held that where intrastate traffic was not contributing its fair share of the revenue required to enable the carriers to render adequate and efficient transportation service an order of the Interstate Commerce Commission directing an increase in intrastate rates, for such purpose, would be valid, if supported by evidence justifying the order.

Relying upon these decisions of the Supreme Court of the United States, this court finds and holds that the Interstate Commerce Commission, in this case, had the authority to enter the order here questioned for the purpose of providing the carriers with needed revenue, even though freight rates were increased beyond the point where such rates provided more revenue than was required to pay the costs for rendering freight services and a fair return on carriers' property devoted to such services.

Plaintiffs contend that should the court find that the Interstate Commerce Commission is vested with authority to increase freight rates, generally, to enable the carriers to meet deficits from passenger operations, nevertheless, the order of the Interstate Commerce Commission, in this [fol. 199] case, does not comply with all the requirements laid down by the Supreme Court of the United States in North Carolina v. United States, supra. We think it does.

While it is doubtful if the order of the Interstate Commerce Commission, in Docket #30140, could be sustained, on the grounds that the action of the Florida Commission resulted in undue and unreasonable advantage, preference of prejudice, as between persons and localities, in intra-

state commerce in Florida on the one hand and interstate commerce on the other (Florida v. U. S., 282 U. S., 194), yet, it is clear from the evidence in the case that it did result in undue, unreasonable and unjust discrimination against against interstate commerce and undue preference as to intrastate commerce, in violation of Section 13(4) of the Interstate Commerce Act, in that it failed to place upon intrastate commerce the burden cast upon such commerce, by the order of the Interstate Commerce Commission, entered in Ex Parte #162 and #166, which was intended to provide needed revenue from both intrastate and interstate commerce, to meet the money requirements of the carriers. The Interstate Commerce Commission found, in this case, that failure of the Florida Commission to authorize increases in the rates in question, resulted in a loss of, at least $915,325.00 per annum to the carriers. And, as evidence of the need for this revenue, counsel for the Florida Commission stated, on oral argument, and in their brief, that the three major railroads operating in Florida sustained deficits from passenger operations of $21,000,000.00, for the year, 1948, the last full year's operations involved in this case.

The intervening plaintiffs interested in specific rates involved in this case attacked the validity of the order of the Interstate Commerce Commission on the ground that the rates prescribed are so high that the carriers, in fact, lost revenue instead of gained revenue, which was the sole purpose of the increases in rates and the purpose sought to be accomplished failing, the order prescribing the rates is illegal. They introduced evidence before the Interstate Commerce Commission supporting their contention. The carriers introduced evidence denying the claims of the shippers. The Interstate Commerce Commission considered all this evidence and, after weighing it, decided against the intervening plaintiffs. This court does not have the authority to over-ride the decision of the Interstate Commerce Commission on this factual question, supported by [fol. 200] evidence as it is in this record, Ohio v. U. S., 292 U. S., 498.

Plaintiffs contend further that conceding the power of the Interstate Commerce Commission to increase freight rates, solely for the purpose of obtaining needed additional reve-

nue to meet passenger deficits, yet every shipper affected by such order had the right to put in issue before the Interstate Commerce Commission, and put in issue before this court, the reasonableness of any specific rate applicable to any particular commodity.

The court is cited to and finds no authority that sustains this contention of the intervening plaintiffs. Moreover, if they were right in their contention the effect would be to nullify the Declared Policy of Congress, incorporated in the Interstate Commerce Act.

Since the Interstate Commerce Commission has been vested with the power to increase freight rates, generally, to give carriers needed additional revenue, increases of this character, in fairness to all, should be made to apply to intrastate as well as interstate commerce, otherwise unjust discrimination would exist between such commerce.

If the intervening plaintiffs are entitled to relief in so far as any specific individual rate is concerned he may take his case to the Interstate Commerce Commission and there secure any modification to which he is entitled. In North Carolina v. United States, supra, the Supreme Court, on this point, said: "The very nature of such a broad general order requires that it contain a saving clause for future modification and adjustment of particular rates." This saving clause was incorporated in the order of the Interstate Commerce Commission in this case and certain of the rates incorporated in the original order entered by the Interstate Commerce Commission have already been modified or removed from the order and the court has no doubt that in the future additional modifications may be made where they are justified by the facts.

We conclude that the order of the Interstate Commerce Commission should be sustained.

Dated at Tallahassee, Florida, this 29th day of June, 1951.

(S.) Leon McCord, Circuit Judge. (S.) Dozier A. DeVane, District Judge. (S.) George W. Whitehurst, District Judge.